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IN THE THIRD JUDICIAL DISTRICT COURT
SALT LAKE COUNTY, STATE OF UTAH

SALT LAKE CITY CORPORATION, a political subdivision existing under the laws of the State of Utah, Plaintiff, v. UTAH INLAND PORT AUTHORTY, a political subdivision existing under the laws of the State of Utah; STATE of UTAH, GARY R. HERBERT, in his official capacity as the Governor of the State of Utah; and SEAN D. REYES, in his official capacity as the Attorney General of the State of Utah. Defendants.	**PLAINTIFF SALT LAKE CITY CORPORATION'S MOTION FOR SUMMARY JUDGMENT AND MEMORANDUM IN SUPPORT** Case No. 190902057 Judge James Blanch

Plaintiff Salt Lake City Corporation, by and through its attorneys of record, hereby files this Motion for Summary Judgment and Memorandum in Support.

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INTRODUCTION

The inland port is a private development proposed to take place on private property that will be owned by private concerns. The State of Utah[1] has no ownership interest in land that will be developed as an inland port and does not own or control any business that will operate an inland port. Rather, to ensure control of local land use decisions for private property within the City's municipal boundaries, the State enacted legislation that creates a new entity, the Utah Inland Port Authority,[2] and delegated broad power to the Authority to make land use and municipal planning decisions for an area that is equal to a fifth of the total geographic area of Salt Lake City. The Act also siphons all municipal monies generated from any new development in this area away from the City and its residents and directly to the control of this newly created and unelected body. The practical effects of this on the City and its residents is staggering. This unelected unaccountable body now exercises jurisdiction over an area of land that standing alone would make it one of the largest cities in Utah — larger than Brigham City, Sandy or South Jordan. It also exercises complete control over the spending of hundreds of millions of the City's property and local sales and use tax. Legislation of this nature is unprecedented and violates the Utah Constitution in several ways.

First, the Authority is not a body the State is permitted to create under the Utah Constitution and the Act may be declared unconstitutional on this ground alone. Second, Utah's ripper clause precludes the State from delegating power to an unelected and unaccountable body, like the Authority, to make, supervise, or interfere with municipal improvements, money, and property,

[1] Referred to hereinafter as the "State."
[2] Referred to throughout this brief as the "Authority"

and to perform municipal functions. The powers delegated by the Act, including the power to regulate private property within the City's boundaries, plan and develop local infrastructure within the City's boundaries, and make decisions regarding the spending and commitment of significant sums of municipal money, are powers the ripper clause protects from State delegation. Third, the Act creates two classes of municipalities; those that are mandated to be subject to the provisions of the Act and those that are only subject if they voluntarily consent. This classification is unfairly discriminatory on its face. There is also no reasonable relationship between mandating the removal of land use control and municipal moneys from certain municipalities and the Act's stated purpose of economic development statewide. As such, the Act also violates Utah's uniform operation of laws provision. Accordingly, the City seeks entry of judgment declaring the Act and its delegation of broad power to the Authority unconstitutional. An injunction enjoining any further action by the Authority is also requested.

BACKGROUND FACTS

A. The State Decides to Relocate the Utah State Prison to the Northwest Quadrant.

In 2015, the State decided to relocate the Utah State Prison from its current location in Draper, Utah to an area within Salt Lake City referred to by the City as the Northwest Quadrant.[3] The Northwest Quadrant is approximately 28,000 acres of largely undeveloped land that lies to the west of the Salt Lake City International Airport and to the north and south of Interstate 80. To relocate the prison to this area, basic infrastructure must be constructed, including streets and pipelines, and municipal services supplied, including the supply of water and sewer. Shortly after

[3] A map of the City's Northwest Quadrant, indicating the locations of the new prison site is attached as **App'x Ex. 1**.

the relocation decision was made, the City and State executed an agreement wherein the parties agreed on the approximate location of certain infrastructure and the parties' respective responsibilities with respect to preliminary design, final design, construction, ownership, and funding of the infrastructure, which included provisions that the City participate in the planning and preliminary design work and provided for City oversight throughout the process. Due to the undeveloped nature of the land and the extent of new infrastructure required, the State's construction costs are high and relocation of the prison will likely exceed $860 million.

B. Property Owners Initiated Discussions with the City for Development of Other Property in the Northwest Quadrant.

Shortly after the State announced its decision to relocate the prison to the City's Northwest Quadrant, two property owners, Kennecott Utah Copper, LLC and NWQ, LLC, who own approximately 4,316 acres of largely undeveloped land in the Northwest Quadrant north of I-80, approached the City with the concept of developing an inland port on a portion of their land. Specifically, the property owners' plan is to construct a railyard facility to facilitate transportation of goods from coast-to-coast and the transfer of goods from trains to trucks. The City was supportive of the proposal and executed development agreements with the property owners providing them vested rights in the City's existing land use ordinances and standard assurances that the City will supply water and sewer services, if the property owners construct pipelines that connect their properties to the existing infrastructure and deed those pipelines to the City. The development agreements also provide a process by which the property owners may seek reimbursement from the City for construction of systemwide improvements necessary for development of the area, including street and utility infrastructure, as well as project specific improvements, including roads, street lighting, and stormwater improvements. The City will

control design, placement and quality standards for the construction of this infrastructure and the property owners will be reimbursed post-performance. Most of these improvements will be dedicated to the City on completion and become part of the City's public infrastructure.

C. The City and State Discussed Adoption of Legislation to Support the Mutual Goal of Developing and Constructing an Inland Port.

Approximately a month after the City executed the development agreements with Kennecott and NWQ, and in the middle of the 2018 legislative session, Greg Hughes, the Speaker of the House of Representatives, called a meeting with Salt Lake County, the City, owners of property in the City's Northwest Quadrant, and other state legislators to announce that he intended to pursue legislation to govern and support the development of an inland port in the Northwest Quadrant. In follow-up meetings, the City told State legislators it supported the vision of developing an inland port in the Northwest Quadrant and that the City had already taken steps to facilitate Kennecott and NWQ's development of their land for that purpose. The City also told the legislators that it would support legislation that further facilitated economic development of the Northwest Quadrant and the mutual goal of developing an inland port, but only if the City retained authority to regulate land use and other core municipal functions. The meetings concluded with Speaker Hughes and Senator Stevenson asking counsel for the Legislature and counsel for the City to work together on proposed language for an inland port bill.

D. The City Proposed a Bill that Retained the City's Core Municipal Land Use Functions.

Just four days later, the City sent counsel for the Legislature an email outlining the City's proposed concepts for an inland port bill, which it believed reflected the discussions with Speaker Hughes and Senator Stevenson. The City proposed a map of properties in the Northwest Quadrant

that would be subject to the terms of the legislation and a board that would be composed of seven members, three members from the State of Utah, three from the City, and one from the County. The City proposed that the board would focus on creating a business plan for the development of an inland port, including engaging stakeholders, identifying funding sources, and establishing timelines for development of an inland port. The City recognized that the State had a desire to consult on the zoning of the northwest quadrant and suggested that the proposed board *could be* an administrative land use appeal authority for property located on land subject to the terms of the proposed legislation, but only if the standard of review that applies to appeals heard by the City's appeal authority was used. This was important because this standard of review ensures the City's retention of its land use authority. Essentially, the City's proposal was for the City to retain local control of municipal infrastructure, property, money, and functions and for the proposed board to act as an advisory board or promotional body.

E. The State Proposed the First Version of the Inland Port Authority Act which Delegated the City's Land Use Authority and Interfered with Municipal Monies.

Just seven days after the City emailed its proposal to the Legislature, the first version of S.B. 234, the bill that enacted the Utah Inland Port Authority Act, was released to the public. The bill completely disregarded the City's proposal and instead delegated wide municipal land use power and municipal monies to a newly created body, with a board that is unelected and unaccountable to local residents. Specifically, S.B. 234 created an Inland Port Authority, referred to hereinafter as the "Authority," and gave it exclusive jurisdiction to exercise broad land use, bonding, and revenue expenditure power (powers that were previously reserved to and exercised by the City) for almost 25,000 acres of property in the Northwest Quadrant, all within the City's

geographic boundaries.[4] The bill proposed a nine-member board to govern, manage and conduct the business affairs of the Authority, which would consist of five members appointed by the State, three members appointed by the City, and one member appointed by the County. Among the powers and duties delegated to the Authority was the right to make an initial land use decision on behalf of the City in certain circumstances for property located on the jurisdictional land and a right to hear all appeals from administrative land use decisions for such property. Contrary to the City's proposal, the Authority's review of City decisions was not made subject to the standard applicable to all other administrative land use appeals, but rather created a new standard that gave the Authority total discretion to reverse any City land use decision based only on the subjective finding that the decision did not meet the Authority's "strategies, policies and objectives." This initial bill also proposed the Authority act as the appeal authority for any of the City's legislative land use decisions and that the Authority may overturn the City's legislative land use decisions under this same new standard. Finally, the bill proposed payment of 5% of the total annual amount of growth-related property tax revenue, defined in the bill as "tax differential," generated from the jurisdictional land directly to the Authority. In the absence of the definition created by the Act, this growth-related property tax revenue is simply property tax, which are monies that make-up the City's general fund and are used to pay for municipal infrastructure, improvements, and services.

F. The City's Voiced its Concerns with S.B. 234 and a 1st Substitute Bill was Introduced.

The Salt Lake City Council held a special session to discuss the draft bill, which Speaker

[4] Land subject to the terms of the Utah Inland Port Authority Act as enacted, or any prior version, will be referred to generally as the "jurisdictional land."

Hughes, Representative Gibson, and Senator Stevenson attended. During the special session the Council expressed its concern that contrary to the City and State's discussions, the proposed bill effectively delegated the City's land use authority for property located on the jurisdictional land to the Authority and improperly redirected municipal funds directly to the Authority. The City Council indicated it continued to support passing legislation to facilitate development of an inland port in the Northwest Quadrant, but significant amendments were necessary for the City to support this bill, including return of the City's land use authority and monies.

A substitute bill was then passed ("1st Substitute bill"), which went some way to remedying the significant problems with the bill. It removed the Authority's power to act as the appeal authority for legislative land use decisions and removed the Authority's right to make land use decisions on behalf of the City, if it determined the City had unreasonably delayed in making the decision. No amendments were made to the provisions redirecting the City's tax revenue directly to the Authority or the Authority's ability to reverse administrative land use decisions, based only on the Authority's desire for a different result.

G. City Representatives Testified Against the 1st Substitute Bill and a 2nd Substitute Bill was Introduced.

The Senate Committee held a hearing on the 1st Substitute bill two days after its release. Elected officials and representatives of the City, including the Mayor, Council Chair, and Planning Director, testified against the bill and identified the ways in which the bill improperly delegated power to an unaccountable unelected body to make, supervise, or interfere with municipal improvement, property, or money or to perform municipal functions and the practical and legal problems that result. A second substitute bill was introduced shortly thereafter ("2nd Substitute bill"), which decreased the boundaries of the jurisdictional land to remove a fully developed area

in the south-east corner of the then designated lands and reduced the Authority's right to take the City's growth-related property tax from 5% to 2%. No changes were made to the power delegated to the Authority to overturn the City's administrative land use decisions based on its desire for a different result. On receiving the 2nd Substitute bill, the City worked with House Representative Patrice Arent to propose language to remedy the ongoing constitutional problems with this delegation of local land use authority.

H. A 4th Substitute Bill is Introduced that Vastly Expanded the Powers Delegated to the Authority.

Apparently the 2nd Substitute bill was simply a ruse to distract the City from what was about to come. Just two days after introduction of the 2nd Substitute bill, and one day before the end of the 2018 legislative session, a fourth substitute to S.B. 234 ("4th Substitute bill")[5] was introduced that vastly expanded the municipal functions delegated to the Authority. Specifically, the 4th Substitute bill delegated wide power to the Authority to develop local infrastructure on the jurisdictional land, including placement and construction of "facilities, lines, or systems" for "water, chilled water, or steam; or sewer, storm drainage, natural gas, electricity, or telecommunications service" and the power to design, construct, or otherwise develop "streets, roads, curb, gutter, sidewalk, walkways, solid waste facilities, parking facilities, and public transportation facilities." It gave the Authority the right to create its own project areas (analogous to the power a municipality is afforded through its redevelopment agency to create a project area, though with less required public process than a redevelopment agency must engage in) and increased the amount of growth related property tax redirected to the Authority from 2% to "up to

[5] The numbering of the substitute bills went directly from 2nd Substitute to 4th Substitute. A 3rd Substitute was never introduced.

100%." It also delegated power to the Authority to use these City monies for a variety of purposes (analogous to the power a municipality has to spend its municipal funds), including to pay principal and interest on bonds issued by the Authority, to cover the costs of installing publicly owned infrastructure and improvements, and to cover the Authority's administrative costs. It also introduced a provision preventing the City from prohibiting "[t]he transporting, unloading, transfer, or temporary storage of natural resources" on the jurisdictional land.

Presumably in response to the testimony of City representatives identifying the constitutional issues with the prior version of the bill, and in an attempt to create the illusion of some statewide interest, the 4th Substitute bill introduced language stating the bill was passed for statewide purpose, to address statewide concerns, and that "the duties and responsibilities of the Authority . . . are beyond the scope and capacity of a municipality. The boundaries of the Authority's jurisdictional lands were also extended to include approximately 3,000 acres from West Valley and Magna in a thinly veiled attempt to bolster the claim of a statewide interest. The 4th Substitute bill also altered the composition of the Authority's board, increasing its size to eleven members and reducing the City representation from three seats to two seats, eliminating the Mayor's seat. It made no amendments to the delegation of power to the Authority to overturn City administrative land use decisions based on a standard that allows it to do so if it simply wants a different result.

I. The Rushed Passage of the 4th Substitute Bill.

The 4th Substitute Bill, a thirty-two page bill, was introduced late in the evening, one day before the end of the 2018 legislative session. Representative Gibson and Representative Winder spoke in favor of the bill. Representative Sandra Hollins spoke in opposition, expressing concern

for the health and safety of residents living near the Inland Port. The House of Representatives then voted to cut off debate, preventing anyone else from speaking to the bill. At 9:34 p.m., a vote of the House was conducted and the 4th Substitute bill was passed out of the House on a 61 to 11 vote, less than thirteen minutes after the 4th Substitute bill was introduced. All Representatives from districts that represent Salt Lake City residents voted against the bill. The 4th Substitute bill was presented on the Senate floor eleven minutes later. Senator Stevenson spoke regarding the bill and received questions from two Senators, both concerned about the ramifications of all the newly added language. At 9:51 p.m., only six minutes after the Senate received the thirty-two page dramatically modified bill, a vote of the Senate was conducted and the 4th Substitute bill was passed by the Senate on a 20 to 6 vote. Again, all Senators from districts that represent Salt Lake City residents voted against the bill. In summary, less than forty-five minutes from the time Representative Gibson introduced the dramatically different 4th Substitute bill to the House floor, the bill passed both the House and Senate and was ready for the Governor's signature.

J. The City Requested the Governor Veto the 4th Substitute Bill.

Two days later, the Mayor and Council Chair met with Governor Gary Herbert to request he veto the 4th Substitute bill. After the meeting, the Mayor sent the Governor a letter again requesting that he veto the bill and reiterating that the City had worked closely with Senator Stevenson throughout the legislative session and would accept the 2nd Substitute bill with four changes.[6] Specifically, the City stated the 2nd Substitute bill would be acceptable with the following four amendments: (a) administrative land use appeals are subject to the standard of

[6] A copy of the Letter from Mayor Biskupski to Governor Herbert, dated March 12, 2018, is attached as **App'x Ex. 2**.

review that applies to all other administrative land use appeals; (2) the City gives 2% of its tax differential from existing project areas to the Authority; (3) the size of the jurisdictional land is reduced to the size the City initially proposed; and (4) the City has that same number of seats on the Authority's board as the State. The Mayor had another meeting with the Governor the day after the letter was sent and again requested that he veto the bill.

K. The Utah League of Cities and Towns and the School District also Requested the Governor Veto the Bill.

The Utah League of Cities and Towns and the Salt Lake City School District also asked Governor Herbert to veto the bill. The Utah League of Cities and Towns, speaking on behalf of the 247 municipalities it represents, wrote a letter to the Governor stating the 4th Substitute bill should be vetoed because it violates two core principles of local control; land use authority and local property tax. The letter also states that the 4th Substitute bill impacts approximately 27% of the total land within the geographic boundaries of Salt Lake City and that the bill permits the Authority to redirect approximately $360 million in new municipal property tax revenue from the City and approximately $581 million in new municipal property tax revenue from the Salt Lake City School District. Despite this severe loss of tax revenue, the City will still be responsible to provide municipal services such as water, sewer, street lighting, roads and sidewalk construction, maintenance and snow removal, and police and fire protection to the Northwest Quadrant. The League of Cities and Towns urged the Governor to veto the bill in light of the significant constitutional and policy issues raised. The Salt Lake City School District also urged the Governor to veto the bill, noting that the school district is the fifth poorest school district in the state, and the potential loss of revenue from redirection of the growth-related property tax would be of great detriment to students and teachers.

L. The Governor Signed the Bill but Acknowledged its Problems.

On March 16, 2018, the Governor signed the 4th Substitute bill, but included a letter to Speaker Hughes and Senate President Wayne Niederhauser stating he would call the legislature into a special session to "modify and improve the bill." Governor Herbert specifically stated that the City's four concerns should be addressed to correct the bill. SB 234 became law on May 8, 2018 and was codified as UTAH CODE § 11-58-101, *et seq*., the Utah Inland Port Authority Act.

M. The Amendments Enacted During the July 2018 Special Session did not Resolve the Constitutional Deficiencies of the Act.

As promised, the Governor called a special session in July 2018 to address the concerns raised by the City. At the conclusion of the special session, H.B. 2001 was passed by both houses and signed by Governor Herbert, again over the objection of representatives for districts that represent Salt Lake City residents. H.B. 2001 did not remedy the constitutional deficiencies of the bill and added provisions that broadened the removal of the City's local land use control. For example, it enacted a provision requiring the City to "allow an inland port as a permitted or conditional use," expanded the Authority's administrative appeal authority to include all appeals from decisions regarding "inland port uses," which is very broadly defined, and introduced time lines by which the City must consider and process those land use applications. It made no change to the redirection of "up to 100%" of the City's growth-related property tax directly to the Authority and added a requirement that the City provide municipal services on the jurisdictional land and the level at which those municipal services must be provided. A provision was added requiring the Authority to enter into an agreement with the City to reimburse the City for these municipal services, but there is no guarantee a satisfactory agreement can be reached. No formula is provided for how these services will be reimbursed, how to account for intangibles like overhead

or the addition of employees to manage the additional maintenance and service requirements necessitated by development on the jurisdictional land, and it allows for consideration of "other factors." H.B. 2001 also significantly increased the total amount of the City's growth-related property tax that will be redirected to the Authority by increasing the period of time over which this will occur from a period of "up to 25 years" to a period of "25 years after a certificate of occupancy is issued." This is significant because it has the practical effect of permitting redirection of these funds potentially in perpetuity. Finally, although 4,000 acres of wetlands were removed from the jurisdictional land, a sliver of developed land to the east of the airport that is not contiguous to the rest of the jurisdictional land was added.

N. A Bill Was Passed in the 2019 Legislative Session that Further Expands the Powers Delegated to the Authority.

During the 2019 legislative session, HB 433 was passed by both houses and signed by Governor Herbert, again over the objection of legislators for districts that represent Salt Lake City residents. It expanded the power delegated to the Authority by designating the entire jurisdictional land as one single project area, which has the result of allowing the Authority to by-pass the minimal public process previously required to create a project area and immediately collect growth-related property tax for the entire jurisdictional land. H.B. 433 also expanded the jurisdiction of the Authority to include land in other areas of the State, but unlike the jurisdiction asserted over land within the City's municipal boundaries, jurisdiction over these lands requires consent of the owner of the property and the consent of the municipality in which the property lies.

H.B. 433 again increased the amount of growth-related property tax monies that are redirected to the Authority by backdating the base taxable value of the jurisdictional land to 2018,[7] extending the period the Authority may collect this growth-related property tax from twenty-five years to forty years, and increasing the amount of growth-related property tax redirected to the Authority from the discretionary "up to 100%" to a mandatory 100%. The Authority will start receiving these redirected funds in November 2019 and may begin spending them after adopting a business plan, which requires no public process other than 24-hour notice under the Utah Open Meetings Act. The Authority was also extended power to begin committing these monies at any time and redirection of a portion of the City's sales and use taxes generated from sales on the jurisdictional land was also added.

O. The City Initiated this Action to Curb the Ever-Expanding Municipal Power Delegated to the Authority.

To curb the ever-expanding municipal power being delegated to the Authority with each amendment to the Act that is passed, the City filed the Complaint in this action shortly before the end of the 2019 legislative session and seeks a declaratory judgment from this Court that the Act violates several provisions of the Utah Constitution.

[7] Notably, this is quite different from the measure customarily used by municipal redevelopment agencies when calculating growth-related property tax for municipal development purposes. (Utah Code §§ 17C-1-102(9) & 402(4); **App'x Ex. 3**, Second Declaration of Danny Walz ("Second Walz Decl."), Sept. 30, 2019, ¶ 12.)

MATERIAL FACTS

A. The Creation of the Utah Inland Port Authority and its Jurisdictional Land.

1. In 2018 the legislature passed the Utah Inland Port Authority Act. (S.B. 234 (4th Substitute) 2018 Leg., Gen. Sess. (2018 Utah).))[8]

2. It was amended in a special session called in July 2018 and amended again in the 2019 legislative session.[9] (H.B. 2001, 2018 Leg. Sess., 2nd Special Sess. (2018 Utah) [10]; H.B. 433, 2019 Leg. Sess. (2019 Utah).)[11]

3. The Act creates a new, independent, political subdivision of the State called the "Utah Inland Port Authority."[12] (UTAH CODE § 11-58-201(1)-(2).)

4. The Authority is governed by a board of directors and all powers delegated to the Authority are exercised through its board.[13] (UTAH CODE § 11-58-301.)

5. The Board consists of eleven members that serve terms of four years. (UTAH CODE § 11-58-302(1) & 303(1).)

6. Board members are not voted for by municipal residents. (UTAH CODE § 11-58-302(1)-(2).)

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[8] *See* https://le.utah.gov/~2018/bills/static/SB0234.html for a copy of S.B. 234 (4th Substitute) 2018 Leg., Gen. Sess. (2018 Utah).

[9] For the convenience of the Court a copy of the current version of the Utah Inland Port Authority Act is attached hereto as **App'x Ex. 4.**

[10] *See* https://le.utah.gov/~2018S2/bills/static/HB2001.html for a copy of H.B. 2001, 2018 Leg. Sess., 2nd Special Sess. (2018 Utah).

[11] *See* https://le.utah.gov/~2019/bills/static/HB0433.html for a copy of H.B. 433, 2019 Leg. Sess. (2019 Utah).

[12] Referred to throughout this brief as the "Authority."

[13] Referred to hereinafter as the "Board."

7. Rather seven members are appointed; two by the State Governor, one by the president of the State Senate, one by the Speaker of the House, one by the chair of the State's Permanent Community Impact Fund Board, one by the Salt Lake County Mayor, and one by the West Valley City Manager, with the consent of the West Valley City Council. (UTAH CODE § 11-58-302(2)(a)-(j).)

8. The remaining four members hold seats as a result of the position they hold with State or local government: the executive director of the State's Department of Transportation; the director of the Salt Lake County Office of Regional Economic Development; the chair of the Salt Lake Airport Advisory Board (or the chair's designee); and the Salt Lake City council member whose district includes the Salt Lake City Airport. (*Id.*)

9. The Act designates "authority jurisdictional land," which is subject to the provisions of the Act. (UTAH CODE § 11-58-102(2).)

10. The current version of the Act identifies approximately 16,000 acres of land from Salt Lake City, West Valley and Magna as "authority jurisdictional land," which includes almost 13,000 acres from Salt Lake City.[14] (**App'x Ex. 5**, Second Declaration of Nick Norris ("Second Norris Decl."), Sept. 28, 2019, ¶ 33, and Ex. A thereto (Map of Jurisdictional Land).)

11. The area of Salt Lake City currently included in the authority jurisdictional land is equal to approximately one fifth of the total geographic area of Salt Lake City. (*Id.*; Geography of Salt Lake City, https://en.wikipedia.org/wiki/Geography_of_Salt_Lake_City.)

[14] Notably, the jurisdictional land consists of one consecutive piece of land with the exception of a small island of land to the east of the airport, which was added during the July 2018 special session at the request of the owner. It does not appear to have any connection to the development of the land as an inland port. (**App'x Ex. 5**., Second Norris Decl., ¶ 33 & Ex. A thereto (Map of Jurisdictional Land).)

B. Municipal Regulation of Private Property.

12. Regulation of private property is performed by local governments throughout the State of Utah. (*See, e.g.,* UTAH CODE § 10-9a-101 *et. seq.*; UTAH CODE § 17-27a-101 *et. seq.*)

13. Municipalities regulate the use of private property first and foremost through zoning. (UTAH CODE § 10-9a-102(2) & 505(1); SALT LAKE CITY CODE § 21A.02.010 *et seq*.)

14. Areas of a municipality are zoned for specific uses based on the nature and characteristics of the area and to avoid conflicting uses. (UTAH CODE § 10-9a-102(1)-(2); SALT LAKE CITY CODE § 21A.02.030.)

15. The City has more than 67 categories of zoning, which include residential use, agricultural use, open space, industrial or manufacturing uses, and overlay zones. (SALT LAKE CITY CODE § 21A.33.010-080; **App'x Ex. 5**, Second Norris Decl. ¶ 5.)

16. The zoning of an area may allow a use as a permitted use or a conditional use. (UTAH CODE § 10-9a-507(4); SALT LAKE CITY CODE § 21A.33.010-080; **App'x Ex. 5**, Second Norris Decl. ¶ 6.)

17. If a use is identified as a conditional use, the City may impose conditions to mitigate the reasonably anticipated detrimental effects of the particular use. (UTAH CODE § 10-9a-507(1)(a); SALT LAKE CITY CODE § 21A.54.010-020; **App'x Ex. 5**, Second Norris Decl. ¶ 7.)

18. Examples of mitigating conditions include limiting hours of operation to reduce the impact of noise to residents or imposing certain practices and procedures to reduce dust or other environmental impacts. (SALT LAKE CITY CODE § 21A.54.080(C); **App'x Ex. 5**, Second Norris Decl. ¶ 8.)

19. Conditions imposed are specific to the anticipated detrimental effects of that particular use and could be tied to the neighborhood or local concerns regarding that use. (UTAH CODE § 10-9a-507(2)(b); SALT LAKE CITY CODE § 21A.54.080(B) & (C); **App'x Ex. 5**, Second Norris Decl. ¶ 9.)

20. Long-term general plans, master plans and/or neighborhood plans are also developed by municipalities to guide future development in a particular area or neighborhood. (UTAH CODE § 10-9a-401, 405 & 406; SALT LAKE CITY CODE § 21A.02.040.)

21. Any use or development of property must comply with applicable zoning. (UTAH CODE § 10-9a-505(1); SALT LAKE CITY CODE § 21A.02.050.)

22. When a property owner wishes to develop property within municipal boundaries it must make an application to the municipality and have that development approved. (*See, e.g.,* UTAH CODE §§ 10-9a-103(27), 509(1)(a)&(c); SALT LAKE CITY CODE § 21A.10.010; **App'x Ex. 5**, Second Norris Decl. ¶ 10.)

23. With respect to the City, if a property owner wishes to develop or use their property for a use that is permitted under the applicable zoning ordinance, and the plan meets all other City code requirements, the application is reviewed by the City's Division of Building Services and processed as a request for a building permit. (SALT LAKE CITY CODE § 21A.04.030; **App'x Ex. 5**, Second Norris Decl. ¶ 11.)

24. If a property owner wishes to develop or use their property for a use that is conditional under the applicable zoning ordinance, or Salt Lake City Code requires the property owner to meet additional requirements or complete additional processes, such as design reviews, planned developments, special exceptions, or subdivisions of property**,** those applications are

considered by employees of the City's Planning Division. (SALT LAKE CITY CODE § 21A.54.020; **App'x Ex. 5**, Second Norris Decl. ¶ 12.)

25. The City's planning division consists of 30 employees with experience in municipal planning and the regulation of private property. (**App'x Ex. 5**, Second Norris Decl. ¶ 13.)

26. The City's planners review these applications to determine if the proposed development or requested use is consistent with the City's zoning for the area and any other municipal or applicable regulation or standard. (SALT LAKE CITY CODE § 21A.10.010; **App'x Ex. 5**, Second Norris Decl. ¶ 14.)

27. Approximately 90% of these applications are reviewed and approved or denied by planning staff, who issue a findings and order letter that outlines what the request is and whether the proposal complies with all applicable City standards. (**App'x Ex. 5**, Second Norris Decl. ¶ 15.)

28. The remaining 10% of land use applications are reviewed by the City's Planning Commission.[15] (**App'x Ex. 5**, Second Norris Decl. ¶ 16.)

29. Salt Lake City Code directs what applications require review by the City's Planning Commission and include most requests for conditional uses and planned developments. (SALT LAKE CITY CODE § 21A.06.030(C); **App'x Ex. 5**, Second Norris Decl. ¶ 17.)

30. Planning staff may also elect to refer an application to the planning commission for such reasons as the significance in change to the property or the surrounding area or neighborhood

[15] The City's planning commission consists of between nine and eleven voting members who are appointed by the Mayor with the advice and consent of the City Council. The members must all be City residents and provide a balanced geographic, professional, neighborhood, and community interests' representation. (SALT LAKE CITY CODE § 21A.06.030(D).)

opposition. (*See, e.g.,* SALT LAKE CITY CODE § 21A.52.040A(b); SALT LAKE CITY CODE § 21A.54.155(E)(1); **App'x Ex. 5**, Second Norris Decl. ¶ 18.)

31. With respect specifically to applications involving conditional uses, Salt Lake City Code identifies certain categories of low impact conditional uses that may be heard and decided by City planning staff after holding an administrative hearing and certain categories of uses that require referral to the City's Planning Commission for decision, which include all conditional uses for property identified by the Utah Inland Port Authority Act as "authority jurisdictional land." (SALT LAKE CITY CODE § 21A.54.155(B); SALT LAKE CITY CODE § 21A.34.150(B)(2)(b); **App'x Ex. 5**, Second Norris Decl. ¶ 19.)

32. When review by the City's Planning Commission is required, a staff report is prepared setting forth the City planners' findings and recommendations. (SALT LAKE CITY CODE § 21A.54.060(D); **App'x Ex. 5**, Second Norris Decl. ¶ 20.)

33. The report is submitted to the City's Planning Commission, which holds a public meeting and a public hearing. (UTAH CODE §§ 10-9a-301 & 302; SALT LAKE CITY CODE § 21A.54.060(E); SALT LAKE CITY CODE § 21A.06.030(E) & (G); **App'x Ex. 5**, Second Norris Decl. ¶ 21.)

34. At the public meeting, the City (through its planning staff), the applicant, and members of the public have an opportunity to be heard. (SALT LAKE CITY CODE § 21A.54.060(E); Salt Lake City Code § 21A.06.030(G); Salt Lake City Planning Commission Policies and Procedures, http://www.slcdocs.com/Planning/Planning%20Commission/pandp2012.pdf; **App'x Ex. 5**, Second Norris Decl. ¶ 22.)

35. The planning commission then approves or denies the application, and if approved, the approval will contain specifically tailored conditions for the anticipated detrimental effects of the proposed use. (UTAH CODE § 10-9a-507(2)(b); SALT LAKE CITY CODE § 21A.54.080; **App'x Ex. 5**, Second Norris Decl. ¶ 23.)

36. If either party believes the decision is inconsistent with the City's zoning ordinance or other applicable City standards, the party may appeal the decision to a City hearing officer. (UTAH CODE § 10-9a-701(1); SALT LAKE CITY CODE § 21A.54.160; **App'x Ex. 5**, Second Norris Decl. ¶¶ 24-25.)

37. The City's hearing officers are all lawyers in the Salt Lake City community that specialize in and have extensive experience in land use law. (SALT LAKE CITY CODE § 21A.06.040(C); **App'x Ex. 5**, Second Norris Decl. ¶ 26.)

38. Hearing officers review decisions of the planning commission under standards set forth in City Code and State law that require determination of whether the decisions are consistent with the City's zoning ordinances and any other applicable City standards. (UTAH CODE §§ 10-9a-701(1) & 703(1); SALT LAKE CITY CODE §§ 21A.06.040(B) & 21A.16.010, *et seq.*)

39. Either party may petition the Third District Court for judicial review of a hearing officer's decision. (UTAH CODE § 10-9a-801(2); SALT LAKE CITY CODE § 21A.16.040.)

40. That review also requires a review of the applicable City standards and a determination of whether the decision was arbitrary, capricious or illegal, under those applicable standards. (UTAH CODE § 10-9A-801(3).)

C. State Regulation of Private Property.

41. The State has no history or experience in the regulation of land use on privately

owned property. (**App'x Ex. 5**, Second Norris Decl. ¶¶ 27-31.)[16]

42. The State does not adopt local zoning ordinances and does not zone private property within a municipality. (**App'x Ex. 5**, Second Norris Decl. ¶ 27.)

43. The State does not develop master plans or neighborhood plans for the purpose of directing the development of areas of a municipality. (**App'x Ex. 5**, Second Norris Decl. ¶ 28.)

44. The State does not have a planning division or employees that review applications from private property owners to determine if the owner's proposed use is consistent with municipal zoning, municipal standards and regulations, or any applicable municipal master or neighborhood plans. (**App'x Ex. 5**, Second Norris Decl. ¶ 29.)

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[16] Had the City been permitted to conduct limited discovery on facts relevant to the elements of its ripper clause claim, it would have supported this fact and Fact Nos. 42-46 with deposition testimony of whomever the State designated as its Rule 30(b)(6) witness on this subject. Thus, to the extent Defendants respond to these facts with anything but an unequivocal "undisputed" the City will likely need to conduct limited discovery to determine the grounds and support for the purported dispute. Indeed, the City's attempts to date to obtain public documents from Defendants that are not readily in the City's possession for purposes of this motion and its preliminary injunction motion have been thwarted. Namely, Defendants refused to produce documents in response to properly filed GRAMA requests on the absurd ground that the City is not a "person" and not entitled to public documents available to any other individual requesting them. *See* UTAH CODE § 63G-2-103(17) (defining "person" as "a nonprofit or profit" corporation). Defendants double-downed with an even more absurd position that the individual making the GRAMA request was not entitled to the documents because they are an employee of the City, which according to Defendants strips them of their personhood. *See* UTAH CODE § 63G-2-103(17) (defining "person" as "an individual" "a nonprofit or profit corporation" or "any combination acting in concert with one another."). Defendants also refused to provide documents on the additional ground that there is ongoing litigation, which is not a valid reason for denying a GRAMA request. *Jessica Phillips v. West Jordan Police Department*, Case No. 2014-04 (finding it is irrelevant that ongoing litigation exists, or that the same records might be the subject of an ongoing discovery request, when responding to a GRAMA request) Finally, Defendants contend any responsive documents are classified as "protected" under GRAMA, an issue that can easily be addressed in discovery through the adoption of a protective order. An appeal has been filed requesting review of the Defendants' denial of these GRAMA requests.

45. The State does not have an administrative land use appeal authority or legally trained hearing officers to hear appeals from municipal land use decisions. (**App'x Ex. 5**, Second Norris Decl., ¶ 30.)

46. The only land use decisions the State makes are with respect to allowing others to use State land by issuing permits, such as a permit for a billboard on a State right of way.[17] (**App'x Ex. 5**, Second Norris Decl. ¶ 31.)

47. The Authority is a newly formed independent, political subdivision of the State. (UTAH CODE § 11-58-201(1)-(2).)[18]

48. The Board was convened in the summer of 2018 and held its first meeting on July 30, 2018. (**App'x Ex. 6,** Minutes of Authority Board Meeting, July 30, 2018.)

49. There is no requirement that any Board member possess experience or expertise in municipal planning or the regulation of private property. (UTAH CODE § 11-58-302.)

50. The Authority's only employee is Jack Hedge, who was hired as the Authority's Executive Director in June 2019. (**App'x Ex. 7,** Minutes of Authority Board Meeting, June 5, 2019, **App'x Ex. 8,** Declaration of Jack Hedge ("Hedge Decl."), Aug. 1, 2019, ¶ 2).)

51. The Authority does not appear to have any other staff. (*Id.*)[19]

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[17] The State also makes decision with respect to its own use of State lands, which land is exempt from municipal control or municipal regulation. (UTAH CODE § 10-9a-304(1); Salt Lake City Code § 21A.02.050(B)(1).)

[18] Like Fact Nos. 41-46, if the City had been given the opportunity to conduct limited discovery on facts relevant to its ripper clause claims, it would have supported this fact and Material Fact Nos. 48-51, with deposition testimony of whomever the Authority designated as its Rule 30(b)(6) witness on this subject. Thus, to the extent Defendants respond to these facts with anything but an unequivocal "undisputed" the City may need to conduct limited discovery to determine the grounds and support for the purported dispute.

[19] *See also,* https://www.utahinlandport.org/.

D. The Act Delegates the City's Power to Regulate Private Property on the Jurisdictional Land to the Authority.

52. The Act contains several provisions that delegate to the Authority the City's power to regulate private property for property located on the jurisdictional land. (UTAH CODE §§ 11-58-205(5)-(6) & 402-403.)

53. Specifically, the Act requires the City to allow an inland port as a permitted or conditional use. (UTAH CODE § 11-58-205(5).)

54. "Inland port" is broadly defined and includes "a hub or other facility for trade combining any combination of rail, trucking, air cargo, and other transportation services." (UTAH CODE §§ 11-58-102(9) & (10).)

55. The Act mandates that any appeal from a municipal "inland port use" decision be heard by the Authority or individuals designated by the Authority, not the City's hearing officers. (UTAH CODE §§ 11-58-402 & 403(1)(a).)

56. An "inland port use" is also broadly defined and includes any "use of land . . .for an inland port [or] that directly implements or furthers the purposes of an inland port, as stated in Subsection (8) [of the Act]; or that complements or supports the purposes of an inland port, as stated in Subsection 8 [of the Act]; or that depends upon the presence of the inland port for the viability of the use." (UTAH CODE § 11-58-102(9).)

57. The Authority's review of an inland port use application is de novo and power is delegated to the Authority to reverse a municipal land use decision if the Authority believes the decision is "contrary to the policies and objectives under Subsection 11-58-203(1); or imposes restrictions or conditions on the proposed development that unreasonably impair or essentially prohibit an inland port use." (UTAH CODE §§ 11-58-403(2)(b)(ii) & 403(5)(b)(i)-(ii).)

58. The policies and objectives set forth in Subsection 11-58-203(1) include supporting "uses of the authority jurisdictional land for inland port uses," facilitating "the transportation of goods" and "the increase in trade in the region," and promoting and developing "uses that are compatible with or complement uses in areas in proximity to the authority jurisdictional land or land in other authority project areas." (UTAH CODE § 11-58-203(1).)

59. The Act also prevents the City from prohibiting "[t]he transporting, unloading, transfer, or temporary storage of natural resources . . . on authority jurisdictional land." (UTAH CODE § 11-58-205(6).)

E. The Source of City Funds.

60. Salt Lake City's general fund is the source of funding for most City expenditures. (**App'x Ex. 9**, Declaration of Mary Beth Thompson ("Thompson Decl."), June 21, 2019, ¶ 3.)

61. For Fiscal Year 2019, the City operated with a general fund of just over $300M. (*Id.* at ¶ 4; *see also* Mayor's Recommended Budget, Fiscal Year 2018-2019, at A.12, Ex. 1 to Thompson Decl.)

62. The monies for this fund are primarily generated through City property tax and City sales and use tax. (*Id.* at ¶ 5; *see also* Mayor's Recommended Budget, Fiscal Year 2018-2019, at A.13), Ex. 1 to Thompson Decl.)

63. Approximately one-third of the City's general fund is generated from property tax revenue and one-third of the fund is generated from sales and use tax revenue. (*Id.* at ¶ 6; *see also* Mayor's Recommended Budget, Fiscal Year 2018-2019, at A.13, Ex. 1 to Thompson Decl.)

64. For Fiscal Year 2019, this amounted to just over $93M from property tax and just over $93M from sales and use tax. (*Id.* at ¶ 7; *see also* Mayor's Recommended Budget, Fiscal Year 2018-2019, at A.13, Ex. 1 to Thompson Decl.)

65. These funds are appropriated by the City Council to, among other things, pay for costs associated with the construction and maintenance of public infrastructure, provision of police and fire services, ownership and maintenance of parks and open space, administration of permits, planning and business licensing, and the implementation of the City's policy objectives for its citizens, including affordable housing, economic development, and youth programs. (*Id.* at ¶ 8.)

66. When there is new growth as the result of development of property, the City's revenue from property tax increases and there are additional monies in the general fund for the City Council to allocate in its budget for public improvements and public expenses throughout the City.[20] (*Id.* at ¶ 9.)

67. Likewise, if there is an increase in the sale of items that generate sales tax, the City's revenue from sales and use tax increases and there are additional monies in the general fund for the City Council to allocate in its budget for public improvements and public expenses throughout the City. (*Id.* at ¶ 10.)

F. The Act's Redirection of Municipal Funds to the Authority.

68. It is estimated that for calendar years 2016 through 2018 the City received the following amounts in property tax revenue for property located within the jurisdictional land.

[20] Revenue from property taxes can also increase if the City requests an increase in property tax rates. (**App'x Ex. 9**, Thompson Decl. ¶ 9, n.1.)

	Calendar Year		
Property Tax Value (Tax Value * 0.003977)	**2016**	**2017**	**2018**
Parcels Inland Port Area	$678,759,326	$803,944,304	$1,199,827,756
Amount Received by City	$2,699,426	$3,197,286	$4,771,715
Annual % Increase		18%	49%

(**App'x Ex. 10**, Declaration of Andrew Reed ("Reed Decl."), ¶ 3, June 21, 2019.)

69. These figures show a 49% increase in property tax revenue from property located on the jurisdictional land in calendar year 2018, which is the result of new growth from development of property in this area. (*Id.*; *see also* **App'x Ex. 9**, Thompson Decl. ¶ 11.)

70. Much of the land in the Authority jurisdictional land is currently undeveloped and vacant. (**App'x Ex. 9,** Thompson Decl. at ¶ 12; **App'x Ex. 5,** Second Norris Decl. ¶¶ 33-34.)

71. Thus, it is anticipated that even more significant increases will occur over the next few years as the jurisdictional land continues to be developed. (**App'x Ex. 9,** Thompson Decl. ¶ 13.)

72. Ordinarily, this additional property tax revenue would go into the City's general fund and the City, through its elected officials, would allocate those revenues to City departments and City projects to achieve the City's policy objectives and serve its citizens. (*Id.* at ¶ 14.)

73. The Utah Inland Port Authority Act alters this result by redirecting to the Authority 100% of all property tax revenue that is the result of new growth for property located on the jurisdictional land. (UTAH CODE § 11-58-601(1)(a)(i)(A).)

74. The City's sales and use tax for this area is being redirected in a similar way. (UTAH CODE § 11-58-602(7); 2019 H.B. 433, adding § 59-12-205(2)(b)(iii).)

75. It is estimated that for fiscal years 2015 through 2018 the City collected the following amounts[21] in sales and use tax for points of sale located on the jurisdictional land.

	Fiscal Year			
1% Local Sales Tax Revenue	**2015**	**2016**	**2017**	**2018**
Inland Port Area	$1,106,915	$1,218,866	$1,546,926	$2,005,603
Amount Received by City	$774,841	$853,206	$1,082,848	$1,403,922
Annual % Increase		10%	27%	30%

(**App'x Ex. 10,** Reed Decl. at ¶ 4.)

76. These figures show a steady increase in sales and use tax revenue from points of sale on the jurisdictional land over the past three fiscal years. (*Id.*; *see also* **App'x Ex. 9,** Thompson Decl. at ¶ 15.)

77. It is anticipated that revenue from sales and use tax for points of sale on the jurisdictional land will continue to increase over the next several years as the area is developed. (**App'x Ex. 9,** Thompson Decl. ¶ 16.)

78. Beginning on January 1, 2020, the Authority will start receiving a significant portion of the sales and use tax revenue collected for points of sale within the authority jurisdictional land. (UTAH CODE § 11-58-602(7); 2019 H.B. 433, adding § 59-12-205(2)(b)(iii).)

[21] Amounts have been calculated assuming a 70% distribution of the total 1% allocated to local government.

79. Again, this is revenue that absent the passage of the Act would go into the City's general fund and be allocated by elected City officials consistent with City policies and objectives for the benefit of its residents. (**App'x Ex. 9,** Thompson Decl. ¶ 17.)

G. The Redirection of Municipal Funds May Continue in Perpetuity.

80. The Act directs that beginning in November 2019, Salt Lake County shall pay to the Authority all property tax revenue for the jurisdictional land that is generated as a result of new growth. (UTAH CODE §11-58-601(3)(a).)

81. This redirects certain property tax monies Salt Lake City would otherwise receive. (UTAH CODE §11-58-601(3)(a); **App'x Ex. 9,** Thompson Decl. ¶¶ 3-14.)

82. Redirection of this growth-related property tax will continue for at least twenty-five years from November 2019. (UTAH CODE §§ 11-58-601(1)(a)(i)(A) & (3)(a).)

83. The twenty-five year period runs from the time a certificate of occupancy is issued "with respect to improvements on a parcel." (UTAH CODE §§ 11-58-601(1)(a)(i) & (3)(a).)

84. Certificates of occupancy are issued per parcel and on the completion of the development of a parcel of land. (SALT LAKE CITY CODE § 18.20.190; **App'x Ex. 11,** Declaration of Orion Goff ("Goff Decl."), June 20, 2019, ¶¶ 4-8.)

85. Currently there are approximately 472 parcels of property on the jurisdictional land, which are owned by approximately 225 different owners. (**App'x Ex. 5,** Second Norris Decl. ¶ 35.)

86. Many of these parcels are undeveloped and will likely be further subdivided when they are developed to facilitate that development. (**App'x Ex. 5,** Second Norris Decl. ¶¶ 34-36.)

87. Thus, certificates of occupancy will be issued on a rolling basis and collection of tax differential will continue for much longer than the twenty-five years stated in the Act. (**App'x Ex. 5**, Second Norris Decl., ¶¶ 34-36; **App'x Ex. 11,** Goff Decl. ¶¶ 4-8.)

88. The Act also provides the Authority discretion to increase the collection of property tax differential from twenty-five years from the date of issuance of a certificate of occupancy for a parcel to forty years from the date of issuance of that certificate. (UTAH CODE § 11-58-601(1)(a)(i)(B).)

89. The Act also allows the Authority to "use" property tax differential before, during, and after the forty-year period identified. (UTAH CODE § 11-58-601(1)(a)(ii).)

90. There is no time limit on the redirection of sales and use tax revenue. (*See generally* H.B. 433, 2018 Leg. Sess, (2018 Utah) (adding § 59-12-205(2)(b)(iii).)

H. Municipal Property and the City's Planning for Municipal Infrastructure.

91. Municipal property includes local infrastructure like roads, water lines, sewer lines, storm drains, curb, gutter, and sidewalks owned by the City. (**App'x Ex. 3,** Second Walz Decl. ¶ 16; **App'x Ex. 9,** Thompson Decl. ¶ 8.)

92. Development of public infrastructure requires long term planning, together with a consideration of the cost of maintenance of that new infrastructure and the impact that new infrastructure will have on existing City infrastructure. (**App'x Ex. 12,** Declaration of Matthew Cassel ("Cassel Decl."), June 14, 2019, ¶ 4.)

93. The City plans for such projects years in advance through the adoption of master plans, studies, and needs assessments. (*Id.* ¶ 5.)

94. For example, the City has developed a Transportation Master Plan that indicates where future roads will be located in yet undeveloped areas of the City. (*Id.* ¶ 6.)

95. The City has also developed a six-year road capital improvement plan that identifies road and public improvement projects that are required throughout the City. (*Id.* ¶ 7.)

96. The City selects projects from this six-year road capital improvement plan based on considerations such as deterioration of the road and available budget. (*Id.* ¶ 8.)

97. These roads are then constructed or improved after consultation with the Transportation Master Plan to ensure the newly constructed or improved road will accommodate growth and impacts from anticipated future development. (*Id.* ¶ 9.)

98. The City also has long term plans for water pipelines and stormwater drainage. (**App'x Ex. 13,** Declaration of Laura Briefer ("Briefer Decl."), Sept. 25, 2019, ¶¶ 4-8.)

99. Like its planning for construction and maintenance of roads, the City develops financial plans, including the establishment of rates and fees, development of multi-year budgets, and acquisition of financing in order to appropriately fund the City's water, wastewater, stormwater, and streetlighting utilities, and to maintain the City's high bond rating. (*Id.* ¶ 9.)

I. The Role of Growth-Related Property Tax in the Planning and Development of Municipal Infrastructure.

100. Growth-related property tax are monies used by municipalities to construct and control the development of necessary municipal infrastructure. (**App'x Ex. 3,** Second Walz Decl. ¶¶ 6-19.)

101. Specifically, the Community Reinvestment Agency Act permits municipalities to choose to create redevelopment agencies for the purpose of encouraging, promoting, or providing

development to revitalize certain areas under their jurisdiction. (UTAH CODE §§ 17C-1-102(15)-(17), 201.5 & 203(1); **App'x Ex. 3,** Second Walz Decl. ¶¶ 5-6.)

102. A municipality's redevelopment agency is controlled and managed by the municipality that created it through its elected officials that sit as the board of directors of the agency and as the legislative body that oversees the agency's actions.[22] (UTAH CODE §§ 17C-1-102(15)-(17), 201.5 & 203(1); **App'x Ex. 3,** Second Walz Decl. ¶¶ 5-6.)

103. Municipal redevelopment agencies identify an area in the municipality for development and propose the creation of a project area for that area of the City. (UTAH CODE § 17C-1-101, *et seq.*; Utah Code § 17C-5-103(1); **App'x Ex. 3,** Second Walz Decl. ¶¶ 7.)

104. Project areas must be approved by the legislative body of the municipality, acting both as the municipal legislative body and as the board of directors of the redevelopment agency. (UTAH CODE § 17C-5-104(3)(f)(ii) & (iii); **App'x Ex. 3,** Second Walz Decl. ¶ 8.)

105. For Salt Lake City, project areas generally range in size from 100 acres to 1,000 acres. (**App'x Ex. 3,** Second Walz Decl. ¶ 9.)

106. Any development of property in a project area is subject to the municipal land use regulations applicable to that area of the City and any appeal from a decision is heard through the City's administrative appeals process. (**App'x Ex. 3,** Second Walz Decl. ¶ 10; **App'x Ex. 5,** Second Norris Decl. ¶¶ 5-26.)

107. After a redevelopment agency creates a project area, it must negotiate with all other taxing entities entitled to property tax for the area if it wishes to receive a portion of those entities'

[22] Salt Lake City chose to establish a redevelopment agency, which is controlled and managed by the City through its elected officials: the Mayor is the Executive Director and the City Council is the Board of Directors. (UTAH CODE § 17C-1-203.)

growth-related property tax revenue (called "tax increment" in the Community Reinvestment Agency Act) for a set period of time. (UTAH CODE §§ 17C-5-202(1)(a) & 204(3)-(10); **App'x Ex. 3,** Second Walz Decl. ¶ 11.)

108. Each negotiation for property tax increment is memorialized in an interlocal agreement, which must be approved by each taxing entity's legislative body. (UTAH CODE § 17C-5-204(4)-(6); Utah Code § 11-13-202.5(1)(b)(i).)

109. Typically, Salt Lake City's Redevelopment Agency negotiates for between 60% and 90% of the tax increment a taxing entity is entitled to receive, which leaves up to 40% for the taxing entity's general fund. (**App'x Ex. 3,** Second Walz Decl. ¶ 12; **App'x Ex. 9,** Thompson Decl. ¶¶ 4-14.)

110. Typically, Salt Lake City's Redevelopment Agency negotiates to receive that portion of the taxing entity's tax increment for no more than 20 to 25 years from the date the interlocal agreement is executed. (**App'x Ex. 3,** Second Walz Decl. ¶ 12.)

111. A redevelopment agency will not receive tax increment unless it negotiates an agreement for the percentage and terms with each taxing entity. (UTAH CODE §§ 17C-5-202(1) & 204(4)-(6).).

112. After negotiating the receipt of tax increment, a redevelopment agency can use these funds to incentivize private entities to relocate to and develop in a project area by offering a reimbursement of costs in return for constructing public improvements and public infrastructure necessary for development of the area. (**App'x Ex. 3,** Second Walz Decl. ¶ 13.)

113. The monetary incentives are negotiated in a tax increment reimbursement agreement, which must be approved by the legislative body of the municipality sitting as the

redevelopment agency's board of directors. (UTAH CODE §§ 17C-1-102(40) & 409(1)(a)(iii)(C); **App'x Ex. 3,** Second Walz Decl. ¶ 14.)

114. For Salt Lake City, the redevelopment agency's tax increment reimbursements are typically post-performance, meaning that the developer is only reimbursed after developing the infrastructure or required improvements that create the increase in property values and the resulting increase in property taxes. (**App'x Ex. 3,** Second Walz Decl. ¶ 15.)

115. The type of public infrastructure and improvements private entities construct in return for reimbursement funded by growth-related property tax, include such things as roads, pipelines, sidewalks, and curb and gutter necessary for the entity's proposed development. (UTAH CODE §§ 17C-1-102(40) & (53); Utah Code § 17C-1-409(1)(a)(iii)(C)-(E); **App'x Ex. 3,** Second Walz Decl. ¶ 16.).

116. Exactly what infrastructure is developed, where it is placed, and the quality and standards are negotiated and agreed to with the City, through its redevelopment agency, and comport with the City's existing infrastructure and development of infrastructure City wide. (**App'x Ex. 3,** Second Walz Decl. ¶ 17.).

117. Negotiating these specifics is extremely important because on completion, this infrastructure is dedicated to the City, becomes part of the City's infrastructure, and the City becomes responsible for its ongoing maintenance as well as any liability. (**App'x Ex. 3,** Second Walz Decl. ¶ 18.)

118. Thus, the City must also be able to meet the service needs required by the additional public infrastructure and plan for impacts this additional infrastructure will have on the City's

existing infrastructure, resources and budget. (**App'x Ex. 3,** Second Walz Decl. ¶ 19; (**App'x Ex. 9,** Thompson Decl. ¶ 8; **App'x Ex. 12,** Cassel Decl. ¶¶ 4-15.))

J. The Act Delegates Power to the Authority to Develop the City's Municipal Infrastructure.

119. The Act delegates to the Authority the power to develop municipal infrastructure. (UTAH CODE § 11-58-202(2)(b).)

120. Specifically, the Act delegates power to the Authority to "facilitate and provide funding for the development of the authority jurisdictional land and land in other authority project areas, including the development of publicly owned infrastructure and improvements and other infrastructure and improvements on or related to the authority jurisdictional land." (UTAH CODE § 11-58-202(2)(b).)

121. "Publicly owned infrastructure and improvements" are defined as "infrastructure, improvements, facilities, or buildings" that are owned, operated or maintained by a public entity or a utility and include "facilities, lines, or systems" that provide "water, chilled water, or steam; or sewer, storm drainage, natural gas, electricity, or telecommunications service" and "streets, roads, curb, gutter, sidewalk, walkways, solid waste facilities, parking facilities, and public transportation facilities." (UTAH CODE § 11-58-102(18).)

122. The entire 16,147 acres of jurisdictional land is designated by the Act as one project area. (UTAH CODE § 11-58-501(1)(a).)

123. The Act requires that 100% of the growth-related property tax revenue (or tax differential) for this project area will be paid to the Authority. (UTAH CODE § 11-58-601(1)(a)(i)(A).)

124. The Authority has complete discretion on how to spend these monies, including to pay principal and interest on bonds issued by the Authority to cover the costs of installing publicly owned infrastructure and improvements or offering it as an incentive to private entities for development of municipal infrastructure. (UTAH CODE § 11-58-602(1).)

125. The Act also mandates that the City provide municipal services and mandates the level of service required. (UTAH CODE § 11-58-205(7)(a)(i)-(ii).)

126. Municipal services include the maintenance of roads and sidewalks, including resurfacing, fixing potholes, and snow removal, and the supply of water, sewer, garbage, fire and police services. (*See, e.g.,* UTAH CODE § 10-8-8; **App'x Ex. 9,** Thompson Decl. ¶ 8.)

127. Reimbursement of the City for these services is wholly dependent on the Authority and City reaching agreement on a method of reimbursement. (UTAH CODE §11-58-205(7)(b).)

128. The Act does not provide a formula for compensation of intangibles like overhead or additional employees and does not guarantee complete compensation as it allows for the consideration of "other factors." (UTAH CODE §11-58-205(7)(b).)

K. The Effect Delegation of Power to the Authority has on Existing City Property, Monies and Infrastructure.

129. Delegating power to the Authority for a fifth of the geographic area of Salt Lake City has significant impacts on the City's existing infrastructure and municipal planning citywide. (**App'x Ex. 12,** Cassel Decl. ¶ 10.)

130. One example is that with increased rail traffic, the City will need to increase the number of separate at-grade crossings in areas outside the jurisdictional land to accommodate the increase in the number of trains crossing City streets on the approach to the jurisdictional land,

which the City has not planned for and is a cost that cannot be sustained by the City on its current revenue. (*Id.* ¶ 11.)

131. Another example is the City's planned reconstruction of 700 South from Redwood Road to 5600 West. (*Id.* ¶ 12.)

132. The City currently classifies this road as a local minor arterial road and reconstruction is planned based on that classification. (*Id.* ¶ 13.)

133. With the development of the jurisdictional land, this road will likely require reclassification as a major arterial road and will need to be expanded and rebuilt. (*Id.* ¶ 14.)

134. Again, this is a cost that has not been planned for and cannot be sustained by the City on its current revenue. (*Id.* ¶ 15.)

L. Application of the Act and its Purpose.

135. The provisions of the Act apply mandatorily to Salt Lake City, Magna and West Valley. (UTAH CODE §§ 11-58-102(2), 202(1) & 501(1).)

136. Other property may become subject to the jurisdiction of the Authority, but only if the Authority receives written consent from the legislative body of the municipality or unincorporated county and the owner of property at issue. (UTAH CODE § 11-58-501(2)(a)(i)-(ii).)

137. This was not a courtesy offered the City. (UTAH CODE §§ 11-58-102(2), 202(1) & 501(1)-(2).)

138. Jack Hedge, the executive director of the Authority, testified under oath that the State's purpose in passing the Act is to recoup the costs it is incurring to relocate the prison:

> [H]undreds of millions of taxpayer dollars (from all the taxpayers in the state of Utah) is being spent by the State of Utah to facilitate the relocation of the prison to the area in question . . . With the formation of the UIPA, the State acted to secure the potential differential in rising property values in the area resulting from its

> significant investment to secure a return on the investment it made for the benefit of all citizens of the State.

(**App'x Ex. 8,** Hedge Decl. ¶ 16.)

M. All State Representatives for Salt Lake City Residents Voted Against Passage of the Act.

139. When the 4th substitute to S.B. 234, which enacted the Utah Inland Port Authority Act, was put before the House of Representatives for a final vote, all eight representatives whose districts include parts of Salt Lake City voted against the bill. (**App'x Ex. 14**, S.B. 234 (4th Substitute), House of Representatives Vote Record, Mar. 7, 2018.)[23]

140. The final vote in the House of Representatives was 61 in favor, 11 opposed, and 3 absent or not voting. (*Id.*).

141. Similarly, in the Senate's final vote on the 4th substitute to S.B. 234, all five senators whose districts include parts of Salt Lake City voted against the bill. (**App'x Ex. 15,** S.B. 234 (4th Substitute), Senate Vote Record, Mar. 7, 2018.)[24]

142. The final vote in the Senate was 20 in favor, 6 opposed and 3 absent or not voting. (*Id.*)

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[23] Also available at: https://le.utah.gov/DynaBill/svotes.jsp?sessionid=2018GS&voteid=1190&house=H) (showing Representative Patrice Arent, Representative Joel Briscoe, Representative Karen Kwan, Representative Rebecca Chavez-Houck, Representative Sandra Hollins, Representative Brian S. King, Representative Angela Romero, and Representative Mark Wheatley voted against the bill.)

[24] Also available at: https://le.utah.gov/DynaBill/svotes.jsp?sessionid=2018GS&voteid=1486&house=S) (showing Senator Jim Dabakis, Senator Gene Davis, Senator Luz Escamilla, Senator Jani Iwamoto, and Senator Todd Weiler voted against the bill.)

ARGUMENT

I. THE UTAH INLAND PORT AUTHORITY ACT CREATES A BODY NOT AUTHORIZED BY LAW.

The Utah Inland Port Authority Act purports to create a government entity or political subdivision pursuant to Article XI, section 8, but it does not meet the constitutional requirements of that provision. Article XI, section 8 permits the legislature to "provide for the establishment of political subdivisions of the State, or other governmental entities, in addition to counties, cities, towns, school districts, and special service districts, to provide services and facilities as provided by statute."[25] To understand the scope of the power conferred, three other constitutional provisions must be considered: (1) Article XI, section 5, which prohibits the creation of cities or towns by special law;[26] (2) Article XI, section 7, which conditions the creation of special service districts on the district being created at the election of the county, city, or town in which the district will operate and the district being governed by the governing body of that county, city, or town;[27] and (3) Article VI, section 28, colloquially referred to as a "ripper clause," which precludes delegation of municipal functions to bodies that are not accountable to the local electorate.[28]

Consistent with these constitutional mandates, Utah courts have consistently found water conservancy districts, sanitation districts, and redevelopment agencies that provide certain municipal services are permissible quasi-municipal corporations, when locally created and governed by the applicable county, city, or town.[29] Equal application of the statute permitting

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[25] UTAH CONST. art. XI, § 8.
[26] UTAH CONST. art. XI, § 5.
[27] UTAH CONST. art. XI, § 7.
[28] UTAH CONST. art. VI, § 28; *see also infra* § II.
[29] *See, e.g.*, *Metro. Water Dist. of Salt Lake & Sandy v. Sorf*, 2019 UT 23, ¶ 1, 445 P.3d 443 (stating "Article XI, section 8 of the Utah Constitution and Utah Code section 17B-1-103

local creation of these entities is also required.[30] As aptly stated by the Utah Supreme Court, when confirming the constitutionality of a locally created improvement district: "Another good reason why the Improvement District Act does not offend against this constitutional provision is that the Act is not a special but a general law **because it applies alike to all portions of the state** and is made for the use and benefit of the inhabitants of all counties which come within **and might desire to take advantage of its provisions**."[31]

In contrast, the Utah Inland Port Authority Act does not create a statutory scheme for counties, municipalities, or towns to elect to form an Authority for development of an inland port. Rather, the Act creates an Authority, confers wide powers to perform or control municipal functions, and mandates its jurisdiction on a fifth of the geographic area of Salt Lake City. The Act is also the epitome of a special law. It was created and passed for the sole purpose of interfering with, supervising, or otherwise taking over control of municipal functions and municipal monies in this one specific circumstance: private property owners' development of an inland port. As such, it is exactly the type of legislation Article XI, section 5 and the ripper clause were designed to preclude.

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authorize the creation of quasi-governmental entities known as limited purpose local districts"); UTAH CODE §§ 17B-1-202 & 203 (permitting creation of limited purpose local districts by a petition of private property owners located in the proposed local district, by a petition of registered voters residing in in the proposed local district, or a resolution by the legislative body of the county and municipality within the boundaries of the proposed local district area); *Tygesen v. Magna Water Co*., 226 P.2d 127, 130 (Utah 1950) (recognized the legitimacy of statutes that permit the creation of water districts and improvement districts where "the initiating agencies were the legislative bodies of the cities desiring the districts"); *Tribe v. Salt Lake City Corp*., 540 P.2d 499, 502-03 (Utah 1975) (finding redevelopment agency created and controlled by municipality was a permissible quasi-municipal corporation).

[30] *See, e.g.*, *Tygesen*, 226 P.2d at 131.

[31] *Id.* (emphasis added).

The Act attempts to mask its constitutional infirmity by relying on the general grant of power to create political subdivisions or governmental entities conferred in Article XI, section 8.[32] But this constitutional provision must be read in harmony with the constitutional protections set forth in Article XI sections 5 and 7, and the ripper clause.[33] To avoid conflict with these provisions, the power to create entities set forth in Article XI, section 8 must be limited to entities that will perform state functions or entities that provide services not ordinarily or customarily provided by municipalities. Prior to the passage of the Utah Inland Port Authority Act, independent entities created directly by the legislature served one of these two purposes.[34] The School and Institutional Trust Lands Administration ("SITLA") and the School and Institutional Trust Fund Office ("SIFO") are examples of State created entities that perform State functions.[35] SITLA was created to manage lands granted to the State by the federal government for the support of common schools and other beneficiary institutions[36] and SIFO manages the trust fund of money from the sale or use

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[32] *See* UTAH CODE § 11-58-201(1).

[33] *See, e.g., Berry By & Through Berry v. Beech Aircraft Corp.*, 717 P.2d 670, 675 & 677 (Utah 1985) (stating the meaning of a constitutional provision "must be taken not only from its history and plain language, but also from its functional relationship to other constitutional provisions" and that "constitutional rights, must be weighed against and harmonized with other constitutional provisions"); *American Bush v. City of S. Salt Lake*, 2006 UT 40, ¶ 18, 140 P.3d 1235 (quoting *In re Worthen,* 926 P.2d 853, 866-67 (Utah 1996)) (stating that "when determining the meaning of a constitutional provision, 'other provisions dealing generally with the same topic . . . assist us in arriving at a proper interpretation" and that "it is in fact necessary, that we construe these two provisions together'").

[34] UTAH CODE § 63E-1-102(4)(b) (listing independent entities created directly by the State); *see also* UTAH'S OFFICE OF LEGISLATIVE RESEARCH AND GENERAL COUNCIL, A GUIDE TO UTAH'S INDEPENDENT ENTITIES (Oct. 2018) (available at https://le.utah.gov/interim/2018/pdf/IndependentEntitiesGuide_Oct.pdf) (hereinafter "A GUIDE TO UTAH'S INDEPENDENT ENTITIES").

[35] *See* UTAH CODE § 53C-1-101 *et seq.*; UTAH CODE § 53D-1-101 *et seq*.

[36] UTAH CODE § 53C-1-201(1)(a)-(b); *see also* A GUIDE TO UTAH'S INDEPENDENT ENTITIES.

of these lands.[37] The Utah Beef Council and the Utah Dairy Commission are examples of State created entities that provide services or functions not provided by local government.[38] The Utah Beef Council promotes the beef industry of the State and encourages local, national, and international use of Utah beef[39] and the Utah Dairy Council investigates and participates in studies of problems peculiar to dairy producers in Utah and takes action to promote, protect, and stabilize the State's dairy industry.[40] Promoting the State's beef industry, or investigating problems particular to dairy producers, are not local functions delegated to or otherwise performed by municipalities[41] and the creation of independent entities to perform these functions does not violate constitutional protections.

In apparent recognition of the constitutional limits on the legislature's ability to create independent entities to perform municipal functions, the Military Installation Development Authority Act[42] ("MIDA") conditions its jurisdiction over public or private land within municipal boundaries on the express and written consent of the municipality.[43] Specifically, MIDA creates an Authority to facilitate the development of military land,[44] which is land owned by the United States Department of Defense or the Utah National Guard.[45] A resolution of the applicable municipality and consent of the private property owner is required before the jurisdiction of MIDA

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[37] UTAH CODE § 53D-1-201(1)-(3); *see also* A GUIDE TO UTAH'S INDEPENDENT ENTITIES.
[38] UTAH CODE § 4-21-101 *et seq*.; UTAH CODE § 4-22-101 *et seq*.
[39] UTAH CODE § 4-21-105(1).
[40] UTAH CODE § 4-22-106(1)-(4).
[41] *See generally* UTAH CODE § 10-8-1 *et seq*.
[42] UTAH CODE § 63H-1-101 *et seq*.
[43] UTAH CODE § 63H-1-401(3)(b).
[44] UTAH CODE §§ 63H-1-201 & 401(3)(a).
[45] UTAH CODE § 63H-1-102(12).

can extend to any non-military land.[46] Despite the questionable constitutionality of MIDA on other grounds,[47] MIDA does at least require the consent of the local governing body prior to assuming control of municipal land use decisions and redirecting its growth-related property tax.[48] It is also a law of general application; requiring the inclusion of military land and the consent of local government in all circumstances.[49]

Unlike any of the examples discussed, the Utah Inland Port Authority Act, which is a "cut and paste" of much of MIDA minus the local consent provision, creates an Authority and confers wide power to perform local functions currently performed by the City. The jurisdiction of the Authority over the City is not conditioned on obtaining the consent of the City and its affected property owners, but rather jurisdiction is forced on a fifth of the geographic area of Salt Lake City to ensure the State's preferred land use regulations are applied and to take all anticipated monetary benefit from development of the land.[50] Such blatant and focused usurping of core municipal functions from just one City and for just one area is unprecedented and is precisely the type of conduct the ripper clause and provisions precluding the creation of cities or towns by special laws were intended to preclude. Article XI, section 8 does not permit the legislature to bypass these important constitutional protections.

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[46] UTAH CODE § 63H-1-401(3)(b).

[47] *See* Robert Gehrke, *Why a Massive New Wasatch County Ski Resort May Not Be a Good Deal for Taxpayers,* SALT LAKE TRIBUNE (Aug. 14, 2019), https://www.sltrib.com/news/2019/08/14/robert-gehrke-why-massive/ (discussing potential constitutional concerns with MIDA's encroachments on local control).

[48] UTAH CODE §§ 63H-1-102(20), 201(3)(j), 401(3)(b).

[49] UTAH CODE § 63H-1-401(3).

[50] UTAH CODE § 11-58-102(2).

In an attempt to create an illusion of legitimacy, the Act is peppered with self-serving language claiming the Authority is created to fulfill a statewide public purpose and to address statewide concerns.[51] But the Court should not be fooled by this fig leaf. Development of an inland port is no more a matter of statewide concern than Kennecott's operation of a mine in Magna, private developers' construction of homes in Daybreak, Herriman, or Mapleton, or Snowbird's operation of a ski resort in the cottonwoods. Such empty statements cannot pass constitutional muster. If that were the case, there is nothing to stop the State from passing legislation that cherry-picks control of industries or economic generators in a checker board fashion throughout the state. For example, the State could draw a boundary around downtown Salt Lake City, Kennecott Utah Copper, or any of Utah's eleven ski resorts, create an entity that mandated control of land use and remove all property tax from these properties, based only on Article XI, section 8 and empty claims of a statewide interest. Alternatively, the State could target a specific city and create an entity with power to overrule all land uses it deems undesirable—perhaps choosing to veto community gardens, food trucks, accessory dwelling units, or all bars in a part of town frequented by a certain group in a community—all land uses that might otherwise be permitted in that City and in adjacent cities. In other words, State created entities, operated by unelected and unaccountable boards, that usurp municipal functions and operate as the functional equivalent of a city by special law. Such is not the intended meaning of Article XI, section 8 and

[51] *See, e.g.,* UTAH CODE § 11-58-201. Notably, the legislature also changed the boundaries of the jurisdictional land at the eleventh hour to add small portions of West Valley and Magna in a half-hearted effort to make it appear that the Act affected interests others than the City's. (S.B. 234 (4th substitute), 2018 Leg. Sess., (Utah 2018). But the West Valley and Magna additions are nominal and have no true connection to the private property owners' development of an inland port.

the Act's creation of the Authority is not constitutional. To find otherwise guts Article XI, sections 5 and 7 and the ripper clause of all meaning. A result this court cannot reach.

II. THE UTAH INLAND PORT AUTHORITY ACT VIOLATES THE RIPPER CLAUSE.

A. The History and Purpose of Utah's Ripper Clause.

In the years following the Civil War, there was an alarming trend that saw state legislatures increasingly giving power to private and public bodies (often for pecuniary gain) that removed important local governmental functions from local municipal control.[52] Municipalities were left helpless to respond because it was generally considered that the power of the legislature over municipalities was "plenary and complete, limited only by provision in the state and federal constitutions."[53] Ripper clauses, which secured constitutional protection for local control over matters of local concern, were a response. Pennsylvania ratified the first such clause through its constitutional convention in 1874,[54] which became the model for other states, including Utah.[55]

Utah's ripper clause is set forth in Article VI, section 28 of the Utah Constitution. It was included in Utah's first constitution,[56] adopted in 1895, and provides:

> The Legislature shall not delegate to any special commission, private corporation or association, any power to make, supervise or interfere with any municipal improvement, money, property or effects, whether held in trust or otherwise, to levy taxes, to select a capitol site, or to perform any municipal functions.[57]

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[52] *See generally* David O. Porter, *The Ripper Clause in State Constitutional Law: An Early Urban Experiment Part I*, 1969 UTAH L. REV. 287, 297-306. For the convenience of the Court a copy of this article is attached as **App'x Exhibit 16.**

[53] *Id.* at 287.

[54] *Id.* at 306-311.

[55] *Id.* at 310.

[56] *See* UTAH CONST. art VI, § 29 (1895). The provision was renumbered in 1972, but no other changes were made.

[57] UTAH CONST. art VI, § 28.

As aptly stated by the Utah Supreme Court, the "paramount purpose of the ripper clause, as it has been interpreted in Utah: [is] 'to prevent interference with local self-government.'"[58] This is accomplished by "protect[ing] local government councils from having their particularly local functions usurped by special boards or commissioners that [are] unrepresentative and [are] often created by the state legislature at the behest of special interests."[59]

Utah's respect for the right of local government to manage matters of local concern is not limited to adoption of a ripper clause. Utah also declined to adopt the majority "Dillon Rule," which "requires strict construction of delegated powers to local government," recognizing only those powers expressly conferred by statute or necessarily implied or necessarily incident to those expressly conferred powers.[60] The Utah Supreme Court rejected application of the Dillon Rule in Utah because "effective local self-government, as an important constituent part of our system of government, must have sufficient power to deal effectively with the problems with which it must deal."[61] The Court found the rule was also inconsistent with Utah's history and a tradition of respect for local government's right to self-governance:

> "[E]very provision of the Constitution relating to this important subject appears to manifest an intention to bring those through whom power is to be exercised as close as possible to the subjects upon whom the power is to operate to preserve the right of local self-government to the people, and to restrict every encroachment upon such right."[62] The Court went on to state that recognition of broad powers of local self-governance "is in harmony with history, with our American constitutional law,

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[58] *City of W. Jordan v. Utah State Ret. Bd.,* 767 P.2d 530, 534 (Utah 1988) (quoting *Mun. Bldg. Auth. of Iron Cty v. Lowder*, 711 P.2d 273 (Utah 1981)).

[59] *City of W. Jordan,* 767 P.2d at 533.

[60] *State v. Hutchinson*, 624 P.2d 1116, 1118-19, n.3 (Utah 1980).

[61] *Id.* at 1120.

[62] *Id.* at 1124.

> with our notions of decentralization of power, and with the spirit and genius of our institutions."[63]

It is against this backdrop[64] — an abhorrence for the delegation of municipal functions to unelected unaccountable boards and Utah's deep respect for the preservation of the right of local government to manage local affairs — that this Court must consider whether the Act's delegation of power to the Authority to regulate private property, develop municipal infrastructure, and spend municipal monies violates the ripper clause.

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[63] *Id*. (quoting *State v. Eldredge,* 76 P. 337 (Utah 1904)). The Court made several other statements in recognition of the importance of respecting and preserving local control:

> [T]he history of our political institutions is founded in large measure on the concept at least in theory if not in practice that the more local the unit of government is that can deal with a political problem, the more effective and efficient the exercise of power is likely to be. *Id.* at 1121.

> Broad construction of the powers of counties and cities is consistent with the current needs of local governments. The Dillon Rule of strict construction is antithetical to effective and efficient local and state government. If at one time it served a valid purpose, it does so no longer. The complexities confronting local governments, and the degree to which the nature of those problems varies from county to county and city to city, has changed since the Dillon Rule was formulated. Several counties in this State, for example, currently confront large and serious problems caused by accelerated urban growth. The same problems however, are not so acute in many other counties. Some counties are experiencing, and others may soon be experiencing, explosive economic growth as the result of the development of natural resources. The problems that must be solved by these counties are to some extent unique to them. *Id.* at 1126.

[64] *See, e.g., American Bush,* 2006 UT 40, ¶ 12 (finding that to determine if the protections of a constitutional provision extend to the conduct in question, courts should look to prior case law, historical evidence of the law when it was drafted, Utah's particular traditions, the intent of the drafters, and "more importantly, the citizens who voted it into effect").

B. The Elements of a Ripper Clause Claim and Utah Jurisprudence.

A ripper clause analysis involves two inquiries: (1) is the body created by the legislature a special commission, private corporation, or an association; and (2) are the powers delegated to the body the ones identified and vouchsafed to local government by the provision.[65] Although the ripper clause was included in Utah's first constitution, adopted more than a century ago, the City has found only twenty-two decisions from Utah Courts[66] and one decision from the Utah Public Service Commission[67] that analyze whether these elements are met and a statute, regulation, or action violates Utah's ripper clause. These decisions span a period of more than eighty years,[68]

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[65] UTAH CONST. art. VI, § 28; *see also Utah Assoc. Mun. Power Sys. v. Pub. Serv. Comm'n of Utah*, 789 P.2d 298, 301-304 (Utah 1990) (finding the Public Service Commission is a special commission and then considering if the performance of a municipal function had been delegated to it by an Interlocal Agreement); *City of W. Jordan*, 767 P.2d at 533-35 (assuming without deciding that State Retirement Board is a special commission and then considering whether operating a statewide retirement program that covers municipal employees is the performance of a municipal function).

[66] *Qwest Corp. v. Utah Telecomm. Open Infrastructure Agency*, 438 F. Supp. 2d 1321 (D. Utah 2006); *Utah Assoc. Mun. Power Sys.,* 789 P.2d 298; *City of W. Jordan*, 767 P.2d 530; *Mun. Bldg. Auth. of Iron Cty*, 711 P.2d 273; *Lindon City v. Eng'rs Constr. Co*., 636 P.2d 1070 (Utah 1981); *Salt Lake Cty. v. Murray City Redevelopment*, 598 P.2d 1339 (Utah 1979); *Salt Lake City v. Int'l Assoc. Firefighters, Locals 1645*, 563 P.2d 786 (Utah 1977); *Tribe v. Salt Lake City Corp.*, 540 P.2d 499 (Utah 1975); *I.J. Wagner v. Salt Lake City*, 504 P.2d 1007 (Utah 1972); *Branch v. Salt Lake Cty. Serv. Area No. 2-Cottonwood Heights*, 460 P.2d 814 (Utah 1969); *Carter v. Beaver Cty. Serv. Area No. One*, 399 P.2d 440 (Utah 1965); *Backman v. Salt Lake Cty.*, 375 P.2d 756 (Utah 1962); *Merkley v. State Tax Comm'n*, 358 P.2d 991 (Utah 1961); *State Water Pollution Control Bd. v. Salt Lake City*, 311 P.2d 370 (Utah 1957); *Cty. Water System v. Salt Lake City*, 278 P.2d 285 (Utah 1954); *Tygesen*, 226 P.2d 127; *Provo City v. Dept. of Bus. Regulation*, 218 P.2d 675 (Utah 1950); *Union Pac. R.R. Co. v. Public Serv. Comm'n*, 134 P.2d 469 (Utah 1943); *Riggins v. Dist. Court of Salt Lake Cty.*, 51 P.2d 645 (Utah 1935); *Lehi City v. Meiling*, 48 P.2d 530 (Utah 1935); *Logan City v. Public Serv. Comm'n*, 271 P. 961 (Utah 1928); *City of St. George v. Public Utilities Comm'n*, 220 P. 720 (Utah 1923).

[67] *In re White City Water Co*., 1992 WL 486434, 133 P.U.R.4th 62 (Utah P.S.C. Feb. 20, 1992).

[68] *See supra* n.64.

with the most recent decision being issued well over a decade ago, in 2006.[69] None of these decisions come close to addressing a situation factually similar to Defendants' enactment of the Utah Inland Port Authority Act and the creation of the Authority and its jurisdictional land. As such, this is a case of largely first impression.

C. The Authority is a Special Commission, Private Corporation, or an Association within the Meaning of the Ripper Clause.

With respect to the first inquiry, the Authority is a special commission, private corporation, or an association within the meaning of the ripper clause because it was created by the State and is not subject to municipal control. The Utah Supreme Court has afforded the term "special commission" an extremely wide meaning: "a special commission is some body or group separate and distinct from municipal government."[70] "Such a commission is not offensive to the constitution by its creation, but only when such a commission is delegated powers which intrude into areas of purely municipal concern."[71] Consistent with this definition, Utah courts have found the State-created Public Service Commission is a special commission within the meaning of the ripper clause and that it violates the clause when it regulates purely municipal concerns.[72] In

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[69] *Qwest Corp.*, 438 F. Supp. 2d 1321.

[70] *Tribe*, 540 P.2d at 502-503.

[71] *Id.* at 503.

[72] *Utah Assoc. Mun. Power Sys.*, 789 P.2d at 301 ("It is certainly true that *Logan City* and *Barnes* hold that the PUC, and therefore the PSC, is a 'special commission.' We see no reason to depart from that holding since it appears to be congruent with the purpose behind 'ripper clauses,' of which article VI, section 28 is an example."); *Logan City*, 271 P. at 970-72 (finding Public Service Commission could not regulate the rates charged by a municipally owned electric company to its residents because that allowed direct supervision over and interference with municipal property and improvements and the performance of a municipal function); *Barnes v. Lehi City*, 279 P. 878, 883& 888 (Utah 1929) (summarily affirming holding in *Logan* that municipality has authority to own and control a utility and that such utility is not subject to regulation or control by the Public Service Commission).

contrast, courts have consistently found quasi-municipal corporations or local service districts are not special commissions within the meaning of the clause. The distinction rests on the fact that the quasi-municipal corporations and local districts at issue in those cases were all created and controlled by the county, city, or town in which the body intended to operate and the county, city, or town governed and maintained control of the newly created body.[73] For example, in *Tribe v. Salt Lake City Corporation*[74] the Court was tasked with determining if Salt Lake City's Redevelopment Agency was a special commission within the meaning of the ripper clause.[75] At issue was the constitutionality of a statute that allowed municipalities to create a redevelopment agency to manage "blight" in their municipality.[76] Salt Lake City chose to exercise this power and the elected officials of Salt Lake City sat as the board and controlled the agency.[77] The City and the redevelopment agency then took actions permitted by the statute and tax payers brought suit challenging the constitutionality of the agency and acts permitted by the statute.[78] The specific question posed to the Court was whether the Salt Lake City Redevelopment Agency was "a special commission and contravenes the provisions of Article VI, section 28."[79] The Court concluded it

[73] *Tygesen*, 226 P.2d at 130 (recognized the legitimacy of statutes that permit the creation of water districts and improvement districts where "the initiating agencies were the legislative bodies of the cities desiring the districts"); *Tribe*, 540 P.2d at 502-03; *Mun. Bldg. Auth. of Iron Cty.*, 711 P.2d at 281-82; *see also supra* § I, & n.27.

[74] 540 P.2d 499.

[75] *Id.* at 501 ("In summary, the points raised by plaintiffs are: (1) That the Redevelopment Agency proposed is in fact a special commission and contravenes the provisions of Article VI, Section 28, Utah Constitution.").

[76] *Id.* at 501-02.

[77] *Id.* at 501.

[78] *Id.* at 501-02.

[79] *Id.* at 501.

was not.[80] Important to the Court's analysis was the fact that the redevelopment agency was created by and controlled by Salt Lake City's elected officials: "the agency is separate and apart from the city government, and yet is administered by a legislative body responsible to the local electorate."[81] In other words, the Court found the redevelopment agency was not a special commission within the meaning of the ripper clause because it was created and controlled by the municipality's elected officials.[82]

The Utah Supreme Court applied the same analysis in *Municipal Building Authority of Iron County v. Lowder*, to find a building authority created by a local government under Utah's Municipal Building Authority Act was not a special commission within the meaning of the ripper clause.[83] In that case, Iron County created a municipal building authority as permitted by the Act, with the commissioners of the County (i.e., its local elected officials) acting as the Board of Trustees.[84] When certain County employees asserted the County's creation of the Authority was a violation of the ripper clause, the County and building authority brought a declaratory action.[85] The question before the Court was whether "the [Building] Authority was a special commission prohibited by article VI, section 28."[86] The Court began its analysis by drawing a distinction between state statutes that "set up an entity and directly give it powers" and state statutes that provide authority to local governments to set up an entity, if they so choose.[87] The Court found

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[80] *Id.* at 502-03.
[81] *Id.* at 503.
[82] *Id.*
[83] 711 P.2d at 281-82.
[84] *Id.* at 276.
[85] *Id.*
[86] *Id*.
[87] *Id.* at 281.

that the Act at issue fell into the latter category and, as such, the Act did not by itself remove "control over local functions from local government or the people."[88] The Court went on to find that in addition to the delegation of any power to a building authority requiring an affirmative and voluntary act of the local government to create the authority, the building authority created was managed and controlled by the elected officials of the County: thus, "[l]ocal control [was] retained over a locally created entity."[89] In summary, the Utah Supreme Court has consistently found that whether a body is a special commission within the meaning of the ripper clause turns on whether the body is voluntarily created by local government and ultimately controlled by that government.

As discussed at length in Section I of this motion, the Authority is neither created by local government nor administered by a legislative body responsible to the local electorate. As such, it falls squarely within the first category of cases identified in *Lowder*; a statute that "set[s] up an entity and directly give[s] it powers,"[90] and easily meets the Utah Supreme Court's definition of a special commission as a "body or group separate and distinct from municipal government."[91]

Notably, in responding to the City's preliminary injunction motion, Defendants argued no violation of the ripper clause could be shown because the Authority is a public corporation and the ripper clause only precludes delegation of certain powers to special commissions, ***private*** corporations or associations.[92] The Utah Supreme Court summarily rejected an identical argument in *Logan City v. Public Utilities Commission of Utah*.[93] In that case the Court was tasked with

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[88] *Id.* at 281-82.
[89] *Id*. at 282.
[90] *Id.*
[91] *Tribe,* 540 P.2d at 502-03.
[92] State Defs.' Opp'n to City's Mot. Prelim. Inj. at 4-5.
[93] 271 P. at 972.

determining if the Public Service Commission was a special commission for purposes of the ripper clause and whether it could set rates for a municipally owned utility.[94] The parties supporting the position that the Public Service Commission had jurisdiction to set rates for municipally owned utility companies argued no violation of the ripper clause could be shown because the Public Service Commission was a "general" not a "special" commission.[95] The Court summarily rejected this construction of the ripper clause provision as "too narrow" and one that "in effect impairs the very essence and purpose of [the ripper clause provision]."[96] Rather, the analysis must turn on who creates and controls the entity; not what the entity is called. As the Court explained: "if municipalities are entitled to protection from an agency of the state exercising delegated powers of the kind enumerated, the right thus proposed to be protected would be violated as much by a general commission doing the same things."[97]

Just like the parties in *Logan*, the State created an entity and called it a public corporation in the hopes of foiling a ripper clause claim. Such kabuki theater necessarily fails: a spade is a spade, even if you call it a fork.

D. The Act Delegates Power to Perform Numerous Municipal Functions.

1. The Municipal Function Test.

In *City of West Jordan v. Utah State Retirement Board*, the Utah Supreme Court was presented with the question of whether a statute that precluded municipalities from withdrawing from the State's retirement system violated the ripper clause.[98] With respect to the second prong

[94] *Id.* at 970-73.
[95] *Id.* at 972-73.
[96] *Id.* at 972.
[97] *Id.*
[98] 767 P.2d 530.

of the ripper clause analysis, the Court conducted a review of Utah case law that purports to give meaning to the term "municipal functions" as used in the ripper clause, and concluded it "provides relatively little by way of consistent analytical framework for determining how to characterize a given area."[99] To remedy this failure, a new multifactored test was adopted to guide courts in determining if the facts of a particular case show a power to "perform [a] municipal function" is delegated.[100] The test directs courts to consider three factors: (1) the relative abilities of the state and the municipality to perform the function; (2) to what degree performance of the function affects the interests of those beyond the boundaries of the municipality; and (3) to what extent the legislation under attack intrudes upon the ability of the people within the municipality to control through their elected officials the substantive policies that affect them uniquely.[101]

Only three decisions have been published in the thirty-one years since *City of West Jordan* and the adoption of this multifactored ripper clause test: one Utah Supreme Court decision,[102] one Utah Federal District Court decision,[103] and one Utah Public Service Commission decision.[104] The functions at issue in those cases are not remotely similar to the powers delegated to the Authority by the Utah Inland Port Authority Act and, thus, offer no guidance. Likewise, any case that predates *City of West Jordan* is now of limited precedential value. However, an analysis of the powers delegated under the three-factor *City of West Jordan* test shows the Act delegates the performance of municipal functions to the Authority in at least four different ways.

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[99] *Id.* at 534.
[100] *Id.*
[101] *Id.*
[102] *Utah Assoc. Mun. Power Sys.*, 789 P.2d 298.
[103] *Qwest Corp.*, 438 F. Supp. 2d 1321.
[104] *In re White City Water Co.*, 1992 WL 486434.

2. Adopting Zoning Ordinances and Regulating Private Property is the Performance of a Municipal Function.

The adoption of zoning ordinances and the regulation of private property are quintessential municipal functions. A municipality possesses the power to adopt ordinances and regulate private property within its boundaries by virtue of its police power,[105] which power is liberally construed.[106] Indeed, Utah appellate courts recognize the legitimacy and "manifest [ ] wisdom underlying the delegation of [this] power to the cities;" namely the "need for some general planning and control" and the fact that it is "essential and desirable" that "cities [ ] have authority in planning their growth."[107] From time immemorial local land use regulation has been delegated to and conducted by local government pursuant to its police power[108] and for good reason — regulation of private property is a local concern that affects the interests of the people within the boundaries of the municipality uniquely.

The Act impermissibly delegates power to make, supervise or interfere with this municipal function in four important ways: (1) it mandates the City adopt zoning for the jurisdictional land that permits an inland port as a permitted or a conditional use; (2) it prohibits the City from regulating the transporting, unloading, transfer, or temporary storage of natural resources on the

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[105] UTAH CODE § 10-9a-102(1)-(2) (conferring wide police power on municipalities to adopt ordinances, resolutions, rules, restrictive covenants, easements, and development agreements to regulate private property within municipal boundaries); *Smith Inv. Co. v. Sandy City*, 958 P.2d 245, 252 (Utah Ct. App. 1998) (recognizing municipalities power to enact zoning ordinance and to regulate private property stems from its police power); *W. Land Equities, Inc. v. City of Logan*, 617 P.2d 388, 390 (Utah 1980) (stating "[i]t is established that an owner of property holds it subject to zoning ordinances enacted pursuant to a state's police power).

[106] *Hutchinson*, 624 P.2d at 1121-26 (finding a delegation of police power is liberally construed and the liberal construction afforded municipalities to adopt land use regulation pursuant to its police power).

[107] *Call v. City of W. Jordan*, 606 P.2d 217, 219 (Utah 1979).

[108] *See, e.g.,* C. L. 1888, § 1798 S 2; R.S. 1898, § 253; UTAH CODE § 10-8-87 (1953).

jurisdictional land; (3) it delegates to the Authority absolute discretion to reverse any administrative land use decision made by the City for property on the jurisdictional land based only on the Authority's opinion that the decision is contrary to the Authority's policies and objectives; and (4) it delegates to the Authority absolute discretion to veto any conditions imposed by the City to mitigate the negative effects an inland port use will have on neighboring property owners or its residents as a whole, again based only on the Authority's opinion that the condition is contrary to the Authority's policies and objectives.

Adoption of zoning and the regulation of private property are matters of local concern that affect the residents of Salt Lake City uniquely and the three-part municipal function test is easily met. The first factor considers the relative abilities of the state and the municipality to perform the function.[109] Zoning and the regulation of private property are functions that have been performed by municipalities since before statehood.[110] Like every other city in the state of Utah, Salt Lake City has adopted zoning ordinances, which identify more than sixty-seven categories of zoning, has a planning department, and an established practice for regulating the appropriate use of land in areas of the City for the benefit of all its residents.[111] The vast majority of land use applications received by the City are considered and decided by city staff in the City's building services or planning divisions.[112] All other decisions are referred to the City's Planning Commission, which is a board of Salt Lake City residents with expertise in land use that are appointed by the elected

[109] *City of W. Jordan*, 767 P.2d at 534; *Utah Assoc. Mun. Power Sys*., 789 P.2d at 302.
[110] *See supra* n.106.
[111] *See generally* Material Fact Nos. 12-40.
[112] Material Fact Nos. 22-28.

officials of Salt Lake City.[113] The Planning Commission's decisions are made after holding a public meeting and hearing from the City, the applicant, and members of the public.[114] The City also has an established administrative appeal authority, staffed with hearing officers with expertise in land use law, who assess whether the decisions of City staff or the City's Planning Commission comport with applicable City zoning and other applicable City standards.[115]

In stark contrast, neither the Authority nor the State generally have any history of making local land use decisions and regulating the use of private property within municipal boundaries.[116] With respect to the Authority, it is a new State-created entity that has no history or experience in adopting zoning ordinances or creating master plans and certainly does not have a planning and permitting department or hearing officers with expertise in the area of land use law.[117] A consideration of the State more generally does not instill more confidence. The State does not adopt zoning ordinances, create master plans, or determine if a private property owner's use of property is consistent with applicable zoning.[118] Rather, the only land use decisions the State ever makes are with respect to its own use of State owned lands or issuing a permit for another's use of State owned lands, like a permit for a billboard on a State right of way.[119] Given its long history, experience, and existing professional planning staff, the City is in a far better position to perform

[113] Material Fact Nos. 23-30 & n.13.
[114] Material Fact Nos. 32-35.
[115] Material Fact Nos. 36-38.
[116] *See generally* Material Fact Nos. 41-51.
[117] Material Fact Nos. 47-51
[118] Material Fact Nos. 41-45.
[119] Material Fact No. 12 & n.12.

the function of adopting zoning and determining appropriate uses for property on land within its municipal boundaries and the first factor shows the delegated functions are municipal.

The second factor considers the degree to which the performance of the function affects the interests of those beyond the boundaries of the municipality.[120] Adoption of zoning and decisions regarding the appropriate and permitted uses of private property on the jurisdictional lands are decisions that specifically affect the residents of the City. Zoning affects the individual property owner seeking the use and the neighborhood surrounding that property. Just as a property owner's overly tall fence or excess dust impacts the neighbors more than the people who live miles away, land uses for property within the jurisdictional land, which is almost entirely in Salt Lake City, most directly affect the property owner and the City residents adjacent to the property. Salt Lake City residents are also the individuals that must live with the larger consequences of the land use decisions made by the Authority, which include such things as increased traffic, pollution, and other environmental impacts that will result from development of the land. These are things that affects the residents of Salt Lake City, not the residents of Price, St George, Manti or other far flung municipalities. As such, Salt Lake City should have the ability to control land use and the mitigation of any negative effects and the second factor also shows the functions delegated are municipal.

The third factor considers the ability of the residents within the municipality to control through their elected officials the substantive policies that affect them uniquely.[121] Again, this factor shows the delegated function is municipal. With respect to municipal zoning, zoning

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[120] *City of West Jordan*, 767 P.2d at 534; *Utah Assoc. Mun. Power Sys*., 789 P.2d at 302.
[121] *Id.*

ordinances are adopted by the City Council, who are elected directly by the City's residents.[122] In contrast, the Act and its mandatory zoning of the jurisdictional land was adopted by the State legislature, and over the objection of all State legislative representatives with districts that include residents of Salt Lake City.[123] It is no secret that the Utah State Legislature is controlled by a majority party that often disagrees with the City's more progressive policies, including environmental and sustainability practices. These legislators (none of whom reside in the City or represent Salt Lake City residents) disagreed with the land use decisions the City was making on the northwest quadrant and wanted to control the type and manner of development of private property solely within the City's boundaries. Rather than respecting local control and the desires of the residents of Salt Lake City, the legislators passed an Act stripping local control of this area, with the knowledge that they would have no accountability to the City's voters for their actions. This is an affront to the democratic process and precisely the type of conduct the ripper clause is designed to prohibit.

With respect to administrative land use decisions, these are decisions made by City staff or the City's Planning Commission, which is comprised of residents of Salt Lake City appointed exclusively by the Mayor with the City Council's advice and consent.[124] Administrative land use decisions determine whether an applicant's requested use comports with City zoning and any other applicable standards.[125] Administrative land use decisions also evaluate and decide whether any conditions should be placed on the use to mitigate the reasonably anticipated detrimental effects

[122] UTAH CODE §§ 10-9a-501(1) & (4)(a)(ii).
[123] Material Fact Nos. 139-142.
[124] Material Fact Nos. 22-35.
[125] *Id.*

of the use, which can include such things as limiting hours of operation to reduce the impact of noise on residents or imposing practices and procedures to reduce dust or other negative environmental impacts.[126] These decisions are made by City staff planners or the City's Planning Commission after holding a public meeting and hearing from members of the public.[127] If City residents are unhappy with the land use decisions made by City employees or the City's Planning Commission, appointees of the Mayor at the consent of City Council, residents can affect change through their local elected officials.

In contrast, the Act's delegation of power to the Authority to reverse any administrative land use decision made by a City employee or the City's Planning Commission for property on the jurisdictional land, obliterates any ability of residents of Salt Lake City to affect change through their elected officials. The Authority's board is not operated or controlled by Salt Lake City's elected officials and unlike the City's Planning Commission it does not consist of City residents appointed exclusively by the City's elected officials. Rather, the majority of the Authority's board members are political appointees from the State, with only two of the eleven seats being held by City representatives.[128] Thus, if City residents are unhappy with the land use decisions made by the Authority, including reversal of City decisions or the vetoing of conditions imposed by the City to mitigate the negative environmental effects of a proposed development (based only on the Authority's desire for a different result), these residents are powerless to affect change through their local elected officials. The Act's adoption of zoning for the jurisdictional land and its

[126] Material Fact Nos. 16-35.
[127] *Id.*
[128] Material Fact Nos. 4-8.

empowering of the Authority to reverse or veto any administrative land use decision made by the City is the delegation of a municipal function and a violation of the ripper clause is shown.

3. Municipal Planning and the Development of Local Infrastructure is a Municipal Function.

The Act delegates wide power to the Authority to develop publicly owned infrastructure on the jurisdictional land and redirects 100% of the growth-related property tax for the jurisdictional land directly to the Authority, which it may use for any purpose it deems important,[129] including development of infrastructure. The net effect is that the Authority is delegated wide power to perform the municipal planning and infrastructure functions currently and appropriately being performed by the City's planning, engineering, and transportation staff, its elected officials, and its redevelopment agency. The planning and development of local roads, sidewalk, and water and sewer pipelines is a local concern and again the three-part municipal function test is easily met.

With respect to the first and second factors, development of public and locally owned infrastructure requires subject matter expertise from the people who most intimately understand the entire Citywide infrastructure: the local officials and staff who build, plan for, maintain, and operate that infrastructure on a daily basis. Development of new infrastructure within municipal boundaries requires long term planning, together with consideration of the cost of maintenance of

[129] Allowable uses include paying for the legal expenses of the Authority, which are limited to no more than 5% of the growth-related property tax, except "legal fees and expenses with respect to potential or pending litigation involving the authority" that are specifically exempted and not subject to the 5% cap. Ironically this means the City's monies could be used to pay for the Authority's defense of the City's ripper clause and other constitutional claims. *See* UTAH CODE § 11-58-602(1)(a)-(b) & (4)(b).

that new infrastructure and the impact that new infrastructure will have on the City's existing infrastructure.[130] To that end, the City develops ten year or longer plans for construction and ongoing maintenance of roads, sidewalks, pipelines, and other similar infrastructure, and has already developed such plans for the jurisdictional land.[131] Any infrastructure that is developed by the City, either directly by the City or through an agreement with a private property owner to construct the infrastructure in return for a monetary incentive, is constructed in line with and consistent with City plans and standards.[132] In contrast, neither the Authority nor the State develop long term infrastructure plans for municipalities, or Salt Lake City specifically.[133] As a result, any infrastructure developed by the Authority, either directly or through agreements it negotiates with private entities for the construction of public infrastructure, will not take into account the long-term impacts of that additional infrastructure both on and off the jurisdictional land. Without a long-term municipal plan, no account will be taken of the effect additional infrastructure will have on existing municipal infrastructure[134] or the City's obligation to maintain and service the

[130] Material Fact No. 92.

[131] Material Fact Nos. 93-99.

[132] *Id.*; *see also* Material Fact Nos. 112 & 115-118.

[133] Indeed, the State has already demonstrated municipal planning blunders, resulting from it making decisions in a vacuum. Specifically, the road and pipeline infrastructure the State plans to construct on the jurisdictional land to service the prison is already over budget and already too small for use by any property owner other than the prison. This is an example of planning and developing infrastructure in a vacuum and without an eye to its place in the entire infrastructure system, which is diametrically opposite to the City's planning and development of such infrastructure.

[134] Notably, the Authority has stated it plans to apply for a Federal Railroad Administration Consolidated Rail Infrastructure and Safety Improvements ("CRISI") grant, presumably to construct rail infrastructure, which will put additional pressure on the City's infrastructure system. This is being done without the benefit of the City's planning, engineering, transportation and redevelopment expertise, and the result will be an infrastructure project not based on, or in harmony with, long-term planning and maintenance principles. This nexus between infrastructure

additional infrastructure. Likewise, no consideration will be taken of the City's ability to meet the additional maintenance and service needs, both from a budgetary and a personnel resources perspective, or what effect the additional strain will have on the City's ability to meet maintenance and service needs of infrastructure throughout the City. As such, decisions regarding the planning and development of appropriate local infrastructure affect the residents of the municipality directly. They are the ones that will live with the results of poorly made or well considered municipal planning decisions. The City is well experienced in municipal planning and the planning of local infrastructure, its decisions affect its residents, and the first and second factors show these are municipal functions.

With respect to the third factor, just like zoning and land use, decisions regarding the City's development of local public infrastructure are best controlled by the electorate through their local elected officials, who control the City's budget, direct the City staff who are subject-matter experts, and are the controlling body of the City's Redevelopment Agency. Recent events demonstrate this point. The City Council, sitting as the Redevelopment Agency's Board, considered an application by NWQ, LLC for a monetary incentive for development of infrastructure and improvements on the jurisdictional land, which improvements include systemwide upgrades of sewer, pump stations, and roads and project specific upgrades of development of curb and gutter.[135] The City and its

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on the jurisdictional land and the rest of the City is the reason that planning, constructing, and maintaining local infrastructure is a core municipal function. Cities understand the big picture of infrastructure within their boundaries and make decisions based on the specific needs of its residents and neighborhoods.

[135] Video and audio recording of a Special Meeting of the Board of Directors of the Salt Lake City Redevelopment Agency, SLC.GOV (Aug. 27, 2019), https://slc.primegov.com/Portal/Meeting?compiledMeetingDocumentFileId=4118 (hereinafter "RDA Special Meeting Recording").

redevelopment agency currently maintain land use control of the parcels that are the subject of this development and the City's share of the growth-related property tax for these parcels by virtue of a development agreement that was executed prior to passage of the Act, which, for the moment, is grandfathered under the Act.[136] City residents appeared at two Redevelopment Agency Board meetings and provided hours of testimony against the incentive and the inland port generally.[137] Before voting to provide the incentive in return for development of infrastructure, the City Council explained to members of the public that under the development agreement with this developer the City had maintained 4,000 acres of open space, had retained money for affordable housing Citywide, and required building standards and environmental controls to address anticipated impacts to the environment.[138] In contrast to the Authority's right to distribute City money for public infrastructure, or other expenditures, with very little public process and no accountability to local voters, the City Council was required to hear hours of emotional testimony and address their constituents before voting. The City also remains in control of the terms of the reimbursement and can, within the parameters of the development agreement, negotiate terms to address its constituents' concerns.

This was a rare opportunity for the City to exercise control of municipal planning and development of municipal infrastructure on the jurisdictional land and impose standards for the benefit of its residents. This provides a classic example of why such decisions must remain with local government. If the voters are unhappy with the City's consideration of their concerns and ultimate decision to approve the monetary incentive, they can affect change directly in the next

[136] UTAH CODE § 11-58-601(1)(c).
[137] *See* RDA Special Meeting Recording.
[138] *Id.*

election of their City Council members or Mayor. In contrast, if these same residents are unhappy with any decision made by the Authority anywhere else on the jurisdictional land, using any of the powers now delegated to the Authority, they have no ability to affect change by altering the make-up of the decision-making board or otherwise influence the decision-making process as constituents.

4. Appropriation of Municipal Monies is a Municipal Function.

The Act does not confer taxing authority on the Authority, but rather redirects hundreds of millions of the City's property tax monies and a portion of its sales and use tax directly to the Authority. Specifically, starting in November 2019 all growth-related property tax from the jurisdictional land, which includes a fifth of the geographical area of the City, is redirected to the Authority for a period of at least twenty-five years, and potentially in perpetuity.[139] A percentage of the City's sales and use tax is also redirected, with no termination date.[140] In the absence of these provisions, these are funds that would be received by the City, become part of the City's general fund, and decisions regarding the spending of these funds would be made by the City's elected officials as part of the City's annual budget.[141]

It hardly merits argument to state that decisions regarding appropriation and allocation of the City's budget is a municipal function. This is a function performed by the City Council on an annual basis and its decisions affect the residents of Salt Lake City for whose benefit the monies are appropriated. As with regulation of private property, municipal planning, and the development

[139] Material Fact Nos. 60-90.
[140] Material Fact Nos. 78-79.
[141] Material Fact Nos. 68-79.

of local infrastructure, the electorate can voice its opinion at public meetings and can affect change at the polls if they are dissatisfied with their elected officials' spending decisions.

5. Allocating Municipal Resources is a Municipal Function.

The Act mandates the City provide municipal services to the jurisdictional land and even mandates the level of service required. When a municipality provides a service, such as snow removal, trash pick-up, resurfacing roads, and fixing pot holes, the municipality must maximize its limited resources to prioritize neighborhoods which have the most pressing needs for the service.[142] These are local concerns. Daily, the City's elected officials must understand, prioritize, and appropriate money and personnel for each of these services based on an intimate understanding of the City and its residents' needs. The performance of municipal services and the level at which each service is provided involves local decisions regarding the allocation of municipal resources and is a core municipal function rightfully controlled by those closest to the citizens—local elected officials. As such, the Act's mandate to provide municipal services and the level at which those services must be provided is also the delegation of a municipal function.

E. The Act Delegates Power to Make, Supervise, or Interfere with Municipal Improvements, Monies, and Property.

In addition to prohibiting the delegation of power to perform municipal functions, the ripper clause also precludes the delegation of power to unelected unaccountable bodies to "make, supervise, or interfere with municipal improvements, money, property or effects."[143] The three-factor test set forth in *City of West Jordan* provides guidance to district courts in determining if

[142] **App'x Ex. 9**, Thompson Decl. ¶ 8.
[143] UTAH CONST. art. VI, § 28.

the power delegated is "to perform any municipal functions"[144] and does not apply to this section of the ripper clause and the City's claims thereunder, which focus on the delegation of power to "make, supervise or interfere" with municipal improvement, money, property, and effects. The Utah Supreme Court's decision in *Logan City* provides some guidance.[145] At issue was whether a municipal owned utility was subject to the provisions of the Utility Act and the jurisdiction of the Public Service Commission.[146] The court found it would be a violation of the ripper clause to subject the municipal owned utility to the provisions of the Act because requiring a municipality to "submit its proposed contract, purchase, or other expenditures" to the Public Service Commission for approval or disapproval as required by the Act subjects the municipality to "direct supervision over and an interference with . . . municipal improvements and property . . . forbidden by [the ripper clause]."[147] Just like the Utilities Act in *Logan City*, the Utah Inland Port Authority Act subjects the City to direct supervision over and interference with "municipal improvement, money, [and] property."[148]

With respect to municipal money, Article XIII, section 5 of the Utah Constitution provides "the Legislature may not impose a tax for the purpose of a political subdivision of the State, but may by statute authorize political subdivisions of the State to assess and collect taxes for their own purposes."[149] Pursuant to this constitutional direction, the State authorizes municipalities to assess and collect property tax from real property within their municipal boundaries and sales and use tax

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[144] *City of W. Jordan*, 767 P.2d at 533-34.
[145] 271 P. 961.
[146] *Id.* at 970-73.
[147] *Id.* at 971-72.
[148] UTAH CONST. art. VI, § 28.
[149] UTAH CONST. art. XIII, § 5(4).

for points of sale within municipal boundaries.[150] Thus, the Utah constitution renders property and sales and use tax collected by the City pursuant to this statutory authority "municipal monies," which are protected from State "interference" and "supervision." The Act's redirection of growth-related property tax and sales and use tax is a blatant violation of the plain language of this provision.

The Act's redirection of these municipal monies also delegates power to the Authority to "make, supervise or interfere" with a municipal "improvement" or municipal "property."[151] To date, the City, like any other municipality, uses growth-related property tax to control development of municipal improvements and municipal infrastructure.[152] Specifically, growth-related property tax is used to incentivize and control the development of municipal infrastructure, such as roads, pipelines, sidewalks, and curb and gutter that are necessary for development of an area, by providing reimbursement to developers for installing this infrastructure concurrent with the development of their property in that area.[153] Exactly what infrastructure is developed, where it is placed, and the quality and standards are negotiated and controlled by the City.[154] As such, the diversion of these monies to the Authority, together with the power to use these monies to select the type, timing, and quality of municipal improvements and infrastructure, delegates to the

[150] UTAH CODE § 10-6-133 (permitting cities to levy property tax.); UTAH CODE § 59-12-203 (permitting cities to impose a sales and use tax). Notably, property tax is the vehicle the State has authorized municipalities to generate revenue for their own use since statehood. *See, e.g.,* C. L. 1888, § 1798 S 2; R.S. 1898, § 253; UTAH CODE § 10-8-87 (1953). *See also* UTAH CODE § 11-9-3 (1959) (granting municipalities the right to levy local sales and use taxes).

[151] UTAH CONST. art. VI, § 28.

[152] Material Fact Nos. 100-118.

[153] Material Fact Nos. 112-118.

[154] Material Fact No. 116.

Authority the power to "make, supervise or interfere with municipal improvements . . . [and municipal] property."[155]

The delegation of power to control municipal monies and develop municipal infrastructure on the jurisdictional land also delegates to the Authority power to interfere with municipal "monies," municipal "improvements," and municipal "property" citywide. The addition of infrastructure in one area of the City has an impact on infrastructure in other areas.[156] Delegating blanket power to the Authority to build infrastructure without City planning and control results in decisions being made in a vacuum that harm the rest of the infrastructure system. For example, increased rail traffic to the jurisdictional land will result in a need for at-grade rail crossings in other areas of the City and increased roads and infrastructure on the jurisdictional land will result in additional traffic and the need for improvement or expansion of roads leading to the jurisdictional land.[157] These are all factors that must be planned for and budgeted concurrent with the development of the jurisdictional land. As such, the wide powers delegated to the Authority by the Act also delegate power to "interfere" with City improvements, monies, and property citywide in violation of the ripper clause.

III. THE UTAH INLAND PORT AUTHORITY ACT VIOLATES THE UNIFORM OPERATION OF LAWS PROVISION.

Article I, section 24 of the Utah Constitution provides that "all laws of a general nature shall have uniform operation."[158] Determining if a statute violates this provision involves a three

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[155] UTAH CONST. art. VI, § 28.
[156] Material Fact Nos. 129-134.
[157] *Id.*
[158] UTAH CONST. art. I, § 24.

part inquiry: "[1] whether the classification is reasonable; [2] whether the objectives of the legislative action are legitimate, and [3] whether there is a reasonable relationship between the classification and the legislative purposes."[159] While this provision is often analogized to the federal equal protection clause, Utah courts have "in fact, developed a standard for reviewing legislative classifications under article I, section 24, which is at least as exacting **and, in some circumstances, more rigorous** than the standard applied under the federal constitution."[160] Commenting on a review of statutes that impose economic regulation, the Utah Supreme Court has recognized that these legislative measures must meet "a higher de facto standard of reasonableness than would be imposed by the federal courts:"

> Since the mid–1930's, when the United States Supreme Court renounced the theory of substantive due process, federal courts have given extremely wide deference to economic regulations challenged on either due process or equal protection grounds. As commentators have noted, the Supreme Court has struck down only one state legislative effort at economic regulation since 1937, making federal constitutional review of such legislation virtually a dead letter.
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> **State courts, on the other hand, have a long tradition, stretching back into the nineteenth century, of being far less willing to find that legislative classifications underlying economic regulations are reasonable**. While state courts have been more deferential to legislative classifications at some times than at others, **they have never abandoned their review function to the degree that the federal courts have since the mid–1930's.** As a result, to pass state constitutional muster, a legislative measure must often meet **a higher de facto standard of reasonableness than would be imposed by the federal courts**.[161]

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[159] *Merrill v. Utah Labor Comm'n*, 2009 UT 26, ¶ 9, 223 P.3d 1089 (citing *Blue Cross & Blue Shield of Utah v. State*, 779 P.2d 634, 637 (Utah 1989)).

[160] *Mountain Fuel Supply Co. v. Salt Lake City Corp*., 752 P.2d 884, 889 (Utah 1988) (emphasis added).

[161] *Id*. (quotation simplified) (emphasis added).

With respect to the first step of the inquiry, "deciding if a classification is reasonable, [Utah courts] have considered: (1) if there is a greater burden on one class as opposed to another without a reason; (2) if the statute results in unfair discrimination; (3) if the statute creates a classification that is arbitrary or unreasonable; or (4) if the statute singles out similarly situated people or groups without justification."[162] If a classification is not reasonable, the statute fails and no further analysis is required.[163] For example, in *Merrill v. Utah Labor Commission*, the Utah Supreme Court considered the constitutionality of a statute that reduced the worker's compensation benefits an individual received, if the individual received both worker's compensation benefits and social security benefits.[164] The court found classification of injured workers based on receipt of social security was not reasonable because if the criterion for determining receipt of worker's compensation benefits was income based there was no reason or "rational basis" to just look at income from social security.[165] The statute failed on this classification scheme alone.[166]

Like *Merrill*, the classification under the Utah Inland Port Authority Act results in "unfair discrimination" and is unreasonable.[167] The Act classifies municipalities into two categories: (1) municipalities that are **mandated** to be subject to the jurisdiction of the Authority and provisions of the Act, and (2) municipalities that are only subject to the jurisdiction of the Authority and the provisions of the Act if the municipality and the affected property owners make an affirmative request to be subject to the Act and provide written voluntary consent. The resulting impact on

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[162] *Merrill*, 2009 UT 26, ¶ 10.
[163] *Id.* ¶ 17.
[164] *Id.* ¶ 1.
[165] *Id.* ¶¶ 15- 16.
[166] *Id.* ¶ 17.
[167] *See id.* ¶ 10 (identifying "unfair discrimination" as a basis for finding a classification unreasonable).

municipalities subjected to the Act is significant, as the Act imposes mandatory zoning and strips the municipality of power to regulate private property, develop infrastructure, and determine how to spend municipal monies generated from development of the land. As applied to the City, the City loses all municipal planning and land use authority for a fifth of its entire geographic area, and the ability to direct the spending of hundreds of millions of dollars in growth-related property tax. Other municipalities suffer these consequences only by their express consent. Salt Lake City is "entitled to be treated equally and on the same basis as [all other municipalities in the state of Utah.]"[168] and the Act fails on this classification scheme alone.

The second and third steps of the inquiry, which "determine if the legislature has a legitimate objective in creating the classification"[169] and if there is a reasonable relationship between the classification and the objective,[170] also show the Act violates Utah's uniform operation of laws clause. With respect to these inquiries, "[courts] do not . . . accept any conceivable reason for the legislation," but rather "judge such enactments on the basis of reasonable or actual legislative purposes."[171] For example, in *Merrill* the court identified three possible objectives for legislation that limited worker's compensation benefits to individuals that also received social security.[172] The Court found the first objective, to reduce employers' liability for worker's compensation payments, was not a legitimate legislative purpose because employers' liability for workplace injuries are already limited by the statutorily defined recoveries in the

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168 *Weber Basin Home Builders Ass'n v. Roy City*, 487 P.2d 866, 868 (1971).
169 *Merrill*, 2009 UT 26, ¶ 18.
170 *Id.* ¶ 22.
171 *Id.* ¶ 18.
172 *Id.* ¶ 19.

Worker's Compensation Act.[173] The court determined the second and third objectives, to prevent duplication of benefits and to restore the solvency of the workers' compensation fund, were legitimate legislative purposes but that this legitimacy did not save the statute because the classifications were not a reasonable or rational means of achieving those objectives.[174] Specifically, the Court found worker's compensation benefits and social security benefits serve different purposes, which meant depriving social security beneficiaries of worker's compensation benefits did not avoid a duplication of benefits and was not a rational or reasonable way of achieving a solvent worker's compensation fund."[175]

Similarly, in *Weber Basin Home Builders Association v. Roy City* the Utah Supreme Court considered whether an ordinance that had the practical effect of "imposing a greater burden of the cost of city government on one class of persons as compared to another," namely new property owners, created a classification "without any proper basis for such differentiation."[176] The Court found that "it is not to be doubted that each new residence has its effect in increasing the cost of city government; nor that due to the steadily increasing costs of everything, including those involved in rendering such services, the city would have authority to raise the fees charged for such services from time to time," but found the classification unreasonable because "the new residents are entitled to be treated equally and on the same basis as the old residents."[177]

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[173] *Id.* ¶ 20.
[174] *Id.* ¶¶ 22-37.
[175] *Id.* ¶ 23.
[176] 487 P.2d at 868.
[177] *Id.*

Like *Merrill* and *Weber Basin*, there is no "reasonable relationship" between the Act's classifications of mandated municipalities and voluntary municipalities and a legitimate legislative purpose. The Executive Director of the Authority, Jack Hedge, testified under oath for the Defendants in response to the City's motion for preliminary injunction that the purpose of the Utah Inland Port Authority Act was for the State to "secure a return"[178] of the costs of relocating the Utah State prison.[179] While recouping costs for public expenditure in a fair, balanced way, is a legitimate legislative purpose, the Authority is not paying for the relocation of the prison and forty years of growth-related property tax for the jurisdictional land will far exceed any costs the State will incur for relocating the prison. There is also no relationship at all between mandating the City to surrender its land use and municipal planning power for a fifth of Salt Lake City and the State recouping the costs from its decision to relocate the prison. Rather, the State prison serves a statewide function and the State's decision to relocate it should not be borne by Salt Lake City residents alone. Rather, these costs can and should be recouped by imposing a tax statewide and distributing the cost to all citizens equally.[180]

The Act is also peppered with general statements that its purpose is to "promote economic growth" for the benefit of citizens statewide.[181] No reasonable relationship exists between mandating the control of land use, municipal planning, and growth-related property tax for Salt

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[178] **App'x Ex. 8,** Hedge Decl., ¶ 16.

[179] *Id.*

[180] Notably, reimbursement of the State's costs for relocating the prison in this way also comports with the principles and teachings of the ripper clause. It imposes the costs of a statewide purpose, the State-owned prison, on residents statewide. If residents statewide are displeased with the State's decision to relocate the prison and incur these costs, they can affect change on the statewide platform through election of their state representative. *See generally supra* § II.

[181] *See, e.g.*, UTAH CODE § 11-58-201(3).

Lake City, Magna, and West Valley, and fostering economic development and the creation of jobs for citizens state wide. The sole purpose of the Governor's Office of Economic Development is to promote economic growth in the State of Utah, which function it has performed for years without mandating control of municipalities' land use and planning functions or taking control of their municipal monies. No reasonable relationship exists between the classifications created by the Act and its stated purpose. A violation of the uniform operation of laws clause is shown.

CONCLUSION

Based on the foregoing, the City respectfully request a judgment declaring the Act unconstitutional in its entirety. The Authority is not a body the State is permitted to create, and the powers delegated to the Authority are done so in violation of the ripper clause. The Act also creates two classifications of municipalities without any reasonable basis and violates the Utah constitution for this additional reason. A declaratory judgment and order striking the Act in its entirety and an injunction precluding any further operation of the Authority should enter.

DATED this 30th day of September 2019.

/s/ Samantha J. Slark
Attorney for Plaintiff

CERTIFICATE OF SERVICE

I hereby certify that on the 30th day of September, 2019, a true and correct copy of **PLAINTIFF SALT LAKE CITY CORPORATION'S MOTION FOR SUMMARY JUDGMENT AND MEMORANDUM IN SUPPORT** was electronically filed with the Court which sent notice to the following:

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